

District of Columbia

OFFICIAL CODE

2001 Edition

Volume 8

Title 11

Organization and Jurisdiction of the Courts
to

Title 15

Judgments and Executions; Fees and Costs

2012

Supplementary Pamphlet

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Under Whose Direction This
Volume Has Been Prepared

V. David Zvenyach, *General Counsel*

John Hoellen, *Legislative Counsel*

Benjamin F. Bryant, Jr., *Codification Counsel*

Karen R. Barbour, *Legal Assistant*

*

PREFACE

These annual cumulative pocket parts update the District of Columbia Official Code, 2001 Edition, with permanent, temporary, and emergency legislation and judicial constructions contained in annotations. These pocket parts contain the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (except such laws as are of application in the General and Permanent Laws of the United States) as of May 10, 2012.

Notes of decisions of District and Federal courts include cases published through May 1, 2012.

Current legislation between pamphlets or pocket parts can be obtained on WestlawNext or Westlaw DC-LEGIS Database.

The unannotated District of Columbia Official Code can be accessed on the District of Columbia Council website at <http://www.dccouncil.us>.

Later laws and annotations will be cumulated in the subsequent pamphlets and annual Pocket Parts.

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DISTRICT OF COLUMBIA OFFICIAL CODE 2001 Edition

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JUDICIARY AND JUDICIAL PROCEDURE

TITLE 11

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Chapter 1

General Provisions.

Section	Section
11-101. Judicial power.	11-102. Status of District of Columbia Court of Appeals.

§ 11-101. Judicial power.

Historical and Statutory Notes

Miscellaneous Notes

Section 23(a) of D.C. Law 15-354 provides that Title 11 is designated Title 11 of the District of Columbia Official Code.

United States Supreme Court

Article III Judges

Judges, de facto officer doctrine, improperly constituted court, affirmance of convictions, prejudice, quorum requirements,

see *Nguyen v. U.S.*, 2003, 123 S.Ct. 2130, 539 U.S. 69, 156 L.Ed.2d 64, on remand 103 Fed.Appx. 635, 2004 WL 1254765.

Notes of Decisions

2. In general

A court of the District of Columbia is a "state court" for purposes of statute providing that there is no appeal to the Court of Appeals from disposi-

tion of a habeas petition when the detention complained of arises out of process issued by a State court, unless a circuit justice or judge issues a certificate of appealability (COA). *Madley v. U.S.*

§ 11-101

Note 2

Parole Com'n, C.A.D.C.2002, 278 F.3d 1306, 349 U.S.App.D.C. 357, certiorari denied 123 S.Ct. 515, 537 U.S. 1004, 154 L.Ed.2d 401. Habeas Corpus ⇨ 818

4. District of Columbia Court of Appeals

Court of Appeals would not use its supervisory power over lower courts to require superior court to order the government to provide criminal defendant with unavailable declarant's grand jury testimony which might impeach excited utterance admitted at trial under hearsay exception; the criminal procedure rule requiring disclosure of a witness' prior statements applied only to witnesses who actually testified at trial, and under fundamental notions of judicial restraint, a change in the law would have to come from remedial legislation or a revision of the criminal procedure rule.

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Watkins v. U.S., 2004, 846 A.2d 293. Criminal Law ⇨ 627.7(3)

The appellate court's supervisory power over lower courts does not provide the appellate court with a roving commission to right wrongs. Watkins v. U.S., 2004, 846 A.2d 293. Federal Courts ⇨ 1066

Even a sensible and efficient use of the appellate court's supervisory power over lower courts is invalid if it conflicts with constitutional or statutory provisions. Watkins v. U.S., 2004, 846 A.2d 293. Federal Courts ⇨ 1066

Commonality of sovereignty of the District of Columbia and the United States lends support to, even if it does not settle, the argument that the Court of Appeals should follow current rather than former Supreme Court teaching. Davis v. Moore, 2001, 772 A.2d 204. Federal Courts ⇨ 382.1

§ 11-102. Status of District of Columbia Court of Appeals.

Notes of Decisions

3. Deference to District of Columbia Court of Appeals

As a matter of judicial policy, the Supreme Court ordinarily defers to the decisions of the Court of Appeals on matters of District of Columbia law. Davis v. Moore, 2001, 772 A.2d 204. Federal Courts ⇨ 382.1

4. Binding nature of decisions

The District of Columbia Court of Appeals is bound to follow United States Supreme Court precedent unless it is expressly limited or abandoned. Mercer v. U.S., 2004, 864 A.2d 110, certiorari denied 125 S.Ct. 1425, 543 U.S. 1188, 161 L.Ed.2d 191. Courts ⇨ 96(3)

Chapter 5

United States District Court for the District of Columbia.

Subchapter I. Jurisdiction.

Section

11-502. Criminal jurisdiction.

Section

11-503. Removal of cases from the Superior Court of the District of Columbia.

SUBCHAPTER I. JURISDICTION.

§ 11-502. Criminal jurisdiction.

Notes of Decisions

2. Joinder of Federal and District offenses

When an indictment contains both District of Columbia and federal charges, the district court may adjudicate the entire case. D.C.Code 1981, § 11-502(3). U.S. v. McLaughlin, C.A.D.C.1998,

164 F.3d 1, 334 U.S.App.D.C. 1, certiorari denied 119 S.Ct. 1485, 526 U.S. 1079, 143 L.Ed.2d 567, post-conviction relief denied 2007 WL 2119043. Criminal Law ⇨ 89

§ 11-503. Removal of cases from the Superior Court of the District of Columbia.

United States Supreme Court

Removal of cases,

All Writs Act and doctrine of ancillary jurisdiction, authority to remove state case to prevent frustration of orders issued by

federal court in previous class action, see Syngenta Crop Protection, Inc. v. Henson, 2002, 123 S.Ct. 366, 537 U.S. 28, 154 L.Ed.2d 368.

Notes of Decisions

1. In general

Generally speaking, upon remand of a removed case, as with the removal in the first place, the receiving court takes the case up where the transferring court left it off, and receiving court therefore treats the pretrial orders of the transferring court as if they were its own. *Harris v. Ladner*, 2003, 828 A.2d 203. Removal Of Cases ⇨ 95; Removal Of Cases ⇨ 109

Upon remand of a case that had been removed to federal court, state trial judge did not abuse his discretion by not permitting former university professor to reopen discovery or file additional exhibits and other pleadings in opposition to pending summary judgment motion filed by university and its employees with respect to professor's breach of contract and tortious interference with contract claims; federal court had refused to accept several untimely supplemental submissions in opposition to summary judgment that professor sought to file

after close of discovery and the relevant filing deadlines had passed, and whether or not federal court's rulings were law of the case, state judge had ample reason to adhere to them. *Harris v. Ladner*, 2003, 828 A.2d 203. Removal Of Cases ⇨ 109

Upon remand of a case that had been removed to federal court, law of the case doctrine did not prevent state trial judge from deciding that certain of former university professor's breach of contract claims against university and its employees were time-barred since that was an issue the federal district court had left open in its ruling granting summary judgment to university and its employees on professor's federal law cause of action and the District of Columbia Circuit's earlier reversal of the dismissal of professor's complaint on statute of limitations grounds likewise did not settle the matter. *Harris v. Ladner*, 2003, 828 A.2d 203. Removal Of Cases ⇨ 109

Chapter 7

District of Columbia Court of Appeals.

Subchapter I. Continuation and Organization.

Section

- 11-705. Assignment of judges; divisions; hearings.
- 11-707. Assignment of judges to and from Superior Court.
- 11-710. Emergency authority to conduct proceedings outside District of Columbia

Subchapter II. Jurisdiction.

- 11-721. Orders and judgments of the Superior Court.

Section

- 11-722. Administrative orders and decisions.
- 11-723. Certification of questions of law.

Subchapter III. Miscellaneous Provisions.

- 11-741. Contempt powers.
- 11-743. Rules of court.

SUBCHAPTER I. CONTINUATION AND ORGANIZATION.

§ 11-705. Assignment of judges; divisions; hearings.

Notes of Decisions

1. In general

In order to satisfy standing requirements, the plaintiff, or those whom the plaintiff properly represents, must have suffered an injury in fact, an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. *York Apartments Tenants Ass'n v. District of Columbia Zoning Com'n*, 2004, 856 A.2d 1079. Federal Courts ⇨ 1052.1

The sine qua non of constitutional standing to sue is an actual or imminently threatened injury that is attributable to the defendant and capable of redress by the court. *York Apartments Tenants Ass'n v. District of Columbia Zoning Com'n*, 2004, 856 A.2d 1079. Federal Courts ⇨ 1052.1

Mother, who did not appeal from child neglect adjudication, lacked standing to ask the Court of Appeals to strike from trial judge's order, as unsupported by the evidence, one of the three findings supporting adjudication, namely, finding that she was incarcerated and therefore unable to care for her children. In re Z.C., 2002, 813 A.2d 199. Infants ⇨ 2375

To establish standing, a litigant must show a substantial probability that the requested relief would alleviate her asserted injury. In re Z.C., 2002, 813 A.2d 199. Action ⇨ 13

Mother had no standing to appeal finding in neglect adjudication that she was unable to take care of the children while imprisoned for child abuse; even if her appeal were successful, mother

§ 11-705

Note 1

ORGANIZATION AND JURISDICTION OF THE COURTS

could not have obtained any practical relief, for neglect adjudication based on her abuse of her son, and ensuing consequences of that adjudication, would be undisturbed. In re Z.C., 2002, 813 A.2d 199. Infants ⇨ 2375

The sine qua non of constitutional standing to sue is an actual or imminently threatened injury that is attributable to the defendant and capable of redress by the court. *Friends of Tilden Park, Inc. v. District of Columbia*, 2002, 806 A.2d 1201, on remand 2002 WL 34103506. Federal Courts ⇨ 1052.1

Under the so-called prudential principles of standing, a plaintiff may assert only its own legal rights, may not attempt to litigate generalized grievances, and may assert only interests that fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. *Friends of Tilden Park, Inc. v. District of Columbia*, 2002, 806 A.2d 1201, on remand 2002 WL 34103506. Federal Courts ⇨ 1052.1

In order to satisfy standing requirements, the plaintiff, or those whom the plaintiff properly represents, must have suffered an injury in fact, an invasion of a legally protected interest which is (1) concrete and particularized, and (2) actual or imminent, not conjectural or hypothetical. *Friends of Tilden Park, Inc. v. District of Columbia*, 2002, 806 A.2d 1201, on remand 2002 WL 34103506. Federal Courts ⇨ 1052.1

A mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization adversely affected or aggrieved for standing purposes. *Friends of Tilden Park, Inc. v. District of Columbia*, 2002, 806 A.2d 1201, on remand 2002 WL 34103506. Associations ⇨ 20(1)

The mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization. *Friends of Tilden Park, Inc. v. District of Columbia*, 2002, 806 A.2d 1201, on remand 2002 WL 34103506. Associations ⇨ 20(1)

A concrete and demonstrable injury to an organization's activities is enough for standing whether the injury is economic or non-economic. *Friends of Tilden Park, Inc. v. District of Columbia*, 2002, 806 A.2d 1201, on remand 2002 WL 34103506. Associations ⇨ 20(1)

An organizational plaintiff may have standing to sue on behalf of its members as well as on its own behalf. *Friends of Tilden Park, Inc. v. District of Columbia*, 2002, 806 A.2d 1201, on remand 2002 WL 34103506. Associations ⇨ 20(1)

An association has standing to bring suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the law-

suit. *Friends of Tilden Park, Inc. v. District of Columbia*, 2002, 806 A.2d 1201, on remand 2002 WL 34103506. Associations ⇨ 20(1)

Supporters of a nonprofit corporation, which had no members, were not equivalent to members for purposes of giving corporation standing to bring action against developer and District of Columbia to enjoin construction of an apartment project; supporters had no power to elect corporation's directors or officers, did not have to make up a majority of its governing board, and did not fund its activities generally, and evidence that supporters guided corporation's actions was absent, as was evidence of a financial nexus between supporters and corporation. *Friends of Tilden Park, Inc. v. District of Columbia*, 2002, 806 A.2d 1201, on remand 2002 WL 34103506. Environmental Law ⇨ 653

The procedural injury implicit in agency failure to prepare or require an Environmental Impact Statement (EIS)—the creation of a risk that serious environmental impacts will be overlooked—is itself a sufficient injury in fact to support standing, provided this injury is alleged by a plaintiff having a sufficient geographical nexus to the site of the challenged project to expect to suffer whatever environmental consequences the project may have. *Friends of Tilden Park, Inc. v. District of Columbia*, 2002, 806 A.2d 1201, on remand 2002 WL 34103506. Environmental Law ⇨ 651

Nonprofit organization's assertion that its inability to weigh in on an environmental impact statement (EIS) for apartment complex construction jeopardized its mission and purpose did not identify concrete interest at stake sufficient to establish procedural injury as basis for standing for organization to enforce procedural requirement for EIS. *Friends of Tilden Park, Inc. v. District of Columbia*, 2002, 806 A.2d 1201, on remand 2002 WL 34103506. Environmental Law ⇨ 652

Nonprofit organization's inability to disseminate information that would have been contained in an environmental impact statement (EIS) did not amount to concrete harm to organization's programmatic activities resulting from District of Columbia's failure to order EIS for apartment complex construction project sufficient to establish informational injury as basis for organization's standing to require preparation of EIS; there was no evidence that EIS information was essential to organization's activities or that the lack of information would render those activities infeasible. *Friends of Tilden Park, Inc. v. District of Columbia*, 2002, 806 A.2d 1201, on remand 2002 WL 34103506. Environmental Law ⇨ 652

The Court of Appeals looks to federal standing jurisprudence to assist in the identification of cases and controversies that properly may be considered, although the Court of Appeals is not bound by "case or controversy" requirements set forth in Article III of the United States Constitution. *Board of Directors, Washington City Orphan Asylum v. Board of Trustees, Washington City Orphan Asylum*, 2002, 798 A.2d 1068. Federal Courts ⇨ 12.1; Federal Courts ⇨ 1061

Under prudential principles of standing, a plaintiff may assert only its own legal rights, may not attempt to litigate generalized grievances, and may assert only interests that fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Board of Directors, Washington City Orphan Asylum v. Board of Trustees, Washington City Orphan Asylum, 2002, 798 A.2d 1068. Federal Courts ⇨ 1052.1

Board of directors of Congressionally-created orphan asylum corporation had standing to bring an action challenging board of trustees' purported

repeal of corporation's bylaws and its purported adoption of bylaws divesting board of directors of all functions assigned to them by Congress; board of directors and corporation's counseling center would suffer actual injury from termination of financial support from trustees, and directors were asserting their own interest in serving in the capacity accorded them by Congressional charter. Board of Directors, Washington City Orphan Asylum v. Board of Trustees, Washington City Orphan Asylum, 2002, 798 A.2d 1068. Asylums And Assisted Living Facilities ⇨ 17; Asylums And Assisted Living Facilities ⇨ 42

§ 11-707. Assignment of judges to and from Superior Court.

Notes of Decisions

In general 1

1. In general

Judge appointed to adjudicate contempt proceeding initiated against nonlawyer was assigned

in accordance with District of Columbia Court Reorganization Act. In re Banks, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Courts ⇨ 70

§ 11-710. Emergency authority to conduct proceedings outside District of Columbia

(a) *In general.* — The court may hold special sessions at any place within the United States outside the District of Columbia as the nature of the business may require and upon such notice as the court orders, upon a finding by either the chief judge of the court (or, if the chief judge is absent or disabled, the judge designated under section 11-706(a)) or the Joint Committee on Judicial Administration in the District of Columbia that, because of emergency conditions, no location within the District of Columbia is reasonably available where such special sessions could be held. The court may transact any business at a special session authorized pursuant to this section which it has the authority to transact at a regular session.

(b) *Notice requirements.* — If the Court of Appeals issues an order exercising its authority under subsection (a), the court —

(1) through the Joint Committee on Judicial Administration in the District of Columbia, shall send notice of such order, including the reasons for the issuance of such order, to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives; and

(2) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.

(Oct. 16, 2006, 120 Stat. 2024, Pub. L. 109-356, § 114(a)(1).)

SUBCHAPTER II. JURISDICTION.

§ 11-721. Orders and judgments of the Superior Court.

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from —

(1) all final orders and judgments of the Superior Court of the District of Columbia;

(2) interlocutory orders of the Superior Court of the District of Columbia —

(A) granting, continuing, modifying, refusing, or dissolving or refusing to dissolve or modify injunctions;

(B) appointing receivers, guardians, or conservators or refusing to wind up receiverships, guardianships, or the administration of conservators or to take steps to accomplish the purpose thereof; or

(C) changing or affecting the possession of property; and

§ 11-721

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(3) orders or rulings of the Superior Court of the District of Columbia appealed by the United States or the District of Columbia pursuant to section 23-104 or 23-111(d)(2).

(b) Except as provided in subsection (c) of this section, a party aggrieved by an order or judgment specified in subsection (a) of this section, may appeal therefrom as of right to the District of Columbia Court of Appeals.

(c) Review of judgments of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia and of judgments in the Criminal Division of that court where the penalty imposed is a fine of less than \$50 for an offense punishable by imprisonment of one year or less, or by fine of not more than \$1,000, or both, shall be by application for the allowance of an appeal, filed in the District of Columbia Court of Appeals.

(d) When a judge of the Superior Court of the District of Columbia in making in a civil case (other than a case in which a child, as defined in section 16-2301, is alleged to be delinquent, neglected, or in need of supervision) a ruling or order not otherwise appealable under this section, shall be of the opinion that the ruling or order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal from the ruling or order may materially advance the ultimate termination of the litigation or case, the judge shall so state in writing in the ruling or order. The District of Columbia Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from that ruling or order, if application is made to it within ten days after the issuance or entry of the ruling or order. An application for an appeal under this subsection shall not stay proceedings in the Superior Court of the District of Columbia unless the judge of that court who made such ruling or order or the District of Columbia Court of Appeals or a judge thereof shall so order.

(e) On the hearing of any appeal in any case, the District of Columbia Court of Appeals shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

(f) The District of Columbia Court of Appeals shall hear an appeal from an order of the Superior Court of the District of Columbia holding an individual in contempt and imposing the sanction of imprisonment on such individual in the course of a case for custody of a minor child not later than 60 days after such individual requests that an appeal be taken from that order.

(g) Any appeal from an order of the Family Court of the District of Columbia terminating parental rights or granting or denying a petition to adopt shall receive expedited review by the District of Columbia Court of Appeals.

(July 29, 1970, 84 Stat. 480, Pub. L. 91-358, Title I, § 111; Sept. 23, 1989, 103 Stat. 634, Pub. L. 101-97, § 3; June 13, 1994, Pub. L. 103-266, § 1(b)(7), 108 Stat. 713; Jan. 8, 2002, 115 Stat. 2112, Pub. L. 107-114, § 4(b).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 107-114 added subsec. (g).

United States Supreme Court

Appellate jurisdiction,

Right to appeal,

In general,

Supreme Court review, final judgment,
state high court reversal of appeals court

decision overturning conviction on basis of Batson error, remand of separate evidentiary and prosecutorial misconduct claims, see *Johnson v. California*, U.S. Cal. 2004, 124 S.Ct. 1833, 541 U.S. 428, 158 L.Ed.2d 696.

Notes of Decisions

Collateral order exception 13.5

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Zoning 9.5

Moot cases 2.5

Standard of review 19

Zoning, final orders 9.5

1. In general

An order denying an attorney's motion to withdraw satisfies the conditions for being immediately

appealable under the collateral order doctrine; the order conclusively determines the disputed question of whether the attorney can withdraw, the question of whether the lawyer must continue to work without pay or without the client's cooperation, or despite conflicts of interest, or without having the qualifications to provide competent representation, will usually be completely separate from merits of underlying action, and an erroneous denial cannot be rectified in an appeal at the end of the case. *Galloway v. Clay*, 2004, 861 A.2d 30. Federal Courts ⇨ 1062

To be immediately appealable under the collateral order doctrine, a trial court order must: (1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment. *Galloway v. Clay*, 2004, 861 A.2d 30. Federal Courts ⇨ 1062

A division of the Court of Appeals is required to follow a prior majority opinion of the Court of Appeals, rather than the concurring or dissenting opinion in the prior case. *In re Thomas-Pinkney*, 2004, 840 A.2d 700. Courts ⇨ 90(2)

Interlocutory orders denying class certification are not reviewable under the collateral order doctrine, for the issues they resolve are not completely separate from the merits of the action. *Ford v. ChartOne, Inc.*, 2003, 834 A.2d 875. Federal Courts ⇨ 1062

Consent of parties cannot enlarge Court of Appeals' jurisdiction. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1061

Where a substantial question exists as to the Court of Appeals' subject matter jurisdiction, it is the Court's obligation to raise it, sua sponte, even though no party has asked us to consider it. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1061

Under collateral order doctrine, orders which finally determine claims of right separable from, and collateral to, rights asserted in action that are too important to be denied review, and too independent of cause itself to require that appellate consideration be deferred until the whole case is adjudicated, are immediately appealable to Court of Appeals, even though they do not terminate the action in the trial court; otherwise such orders would be effectively unreviewable, and the rights at stake could be lost irreparably. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1062

A ruling on a motion to dismiss will qualify for immediate appellate review under the collateral order doctrine if it: (1) conclusively determines a disputed question of law; (2) resolves an important issue that stands completely separate from the merits of the case; and (3) is effectively unreviewable on appeal from a final judgment. *Heard v. Johnson*, 2002, 810 A.2d 871. Federal Courts ⇨ 1062

An order denying a motion to dismiss based on lack of subject matter jurisdiction that asserts an

immunity from law suits is the type of ruling commonly found to meet the requirements of the collateral order doctrine and thus be immediately appealable, so long as the ruling turns on an issue of law rather than on a factual dispute. *Heard v. Johnson*, 2002, 810 A.2d 871. Federal Courts ⇨ 1062

Court of Appeals had jurisdiction, under the collateral order doctrine, to hear interlocutory appeal brought by church trustees, who appealed denial of their motion to dismiss defamation claim brought by pastor on grounds of lack of subject matter jurisdiction, where trustees based such claim on fact that they were entitled to immunity under the Free Exercise Clause of the First Amendment, and order denying trustees' immunity dealt with an issue that was utterly separate from merits of defamation claim. *Heard v. Johnson*, 2002, 810 A.2d 871. Federal Courts ⇨ 1062

To qualify for immediate appellate review under the collateral order doctrine, the ruling must satisfy three requirements: (1) it must conclusively determine a disputed question of law; (2) it must resolve an important issue that is separate from the merits of the case; and (3) it must be effectively unreviewable on appeal from a final judgment. *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 2001, 774 A.2d 332. Federal Courts ⇨ 1062

The denial of a motion that asserts an immunity from being sued is the kind of ruling that is commonly found to meet the requirements of the collateral order doctrine and thus be immediately appealable, so long as the ruling turns on an issue of law rather than on a factual dispute. *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 2001, 774 A.2d 332. Federal Courts ⇨ 1062

Under collateral order doctrine, Court of Appeals had jurisdiction over law firm's appeal from denial of its motion to dismiss, for failure to state claim, corporation's defamation action against firm, alleging that firm slandered corporation when firm solicited one of corporation's shareholders as client in order to bring potential shareholders' derivative or class action lawsuit against corporation; trial court conclusively determined (by rejecting) firm's claim of immunity under "judicial proceedings" privilege, issue of immunity from having to defend against defamation claim was separate from merits of that claim, and denial of absolute immunity was effectively unreviewable on appeal from final judgment, because by then purported entitlement not to stand trial or face other burdens of litigation would be lost irretrievably. *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 2001, 774 A.2d 332. Federal Courts ⇨ 1062

Under "collateral order doctrine," interlocutory orders are appealable if they: (1) conclusively determine a disputed question of law; (2) resolve important issue separate from merits of case; and (3) are effectively unreviewable on appeal from a final judgment. *In re Ti.B.*, 2000, 762 A.2d 20, on subsequent appeal 878 A.2d 1255. Federal Courts ⇨ 1062

Trial court's orders prohibiting father from conferring with his criminal defense counsel about Fifth Amendment privilege against self-incrimination and barring criminal defense counsel from courtroom while father asserted that privilege in neglect proceeding arising from disappearance of, and father's suspected murder of, children's mother, met requirements of collateral order doctrine and were immediately appealable; orders conclusively determined disputed questions of law, whether father had the right to share information and access with criminal defense counsel was an important issue with constitutional dimensions and, as framed in case, was issue that was separate from merits of neglect proceeding, and orders were not effectively reviewable on appeal from a final judgment. In re Ti.B., 2000, 762 A.2d 20, on subsequent appeal 878 A.2d 1255. Federal Courts ⇨ 1062

2. Decisions reviewable, generally

Because summary judgment order denying plaintiff any recovery in personal injury action was final and appealable, 30-day time limit for filing notice of appeal from judgment began to run at time of judgment entry, even though trial court erroneously named a dismissed party as defendant in order granting judgment and failed to name sole remaining defendant, since trial court's error required only clerical correction; it was clear from the judgment and order that the case was finally and adversely decided against plaintiff and in favor of the only remaining defendant. Farrow v. J. Crew Group Inc., 2011, 12 A.3d 28. Federal Courts ⇨ 1065

District Court of Appeals retained authority to determine whether Superior Court's dismissal of action to challenge Condominium and Cooperative Conversion and Sales Branch's (CCCSB) decision to reject application for registration as tenant organization under Rental Housing Conversion and Sale Act was appropriate, although superior court's lack of jurisdiction over the merits divested District Court of Appeals of jurisdiction to address the merits. 2348 Ainger Place Tenants Ass'n, Inc. v. District of Columbia, 2009, 982 A.2d 305. Federal Courts ⇨ 1066

In the absence of specific authority a motion for reconsideration does not toll the time for noting an appeal from an otherwise final appealable order. U.S. v. Stephenson, 2006, 891 A.2d 1076. Criminal Law ⇨ 1069(5)

The government cannot appeal from an order denying reconsideration of an earlier order dismissing an indictment. U.S. v. Stephenson, 2006, 891 A.2d 1076. Criminal Law ⇨ 1024(1)

The denial of a motion to reconsider is not an appealable order. U.S. v. Stephenson, 2006, 891 A.2d 1076. Criminal Law ⇨ 1023(14)

In a "record remand," appellate court retains jurisdiction over the case, and the trial court may take no action, with respect to the case, other than that specified in the record remand order; a "case remand," on the other hand, returns the case to the trial court for all purposes, the appellate court

retains no jurisdiction over the case and the appeal is terminated, and if a party is dissatisfied with the action of the trial court, the only course available to obtain review is to file a new notice of appeal, once a final order or judgment is entered. Jung v. Jung, 2004, 844 A.2d 1099. Federal Courts ⇨ 1067

Court of Appeals did not have jurisdiction to vacate denial of first appellant's motion for attorney fees when it vacated denial of second appellant's motion for attorney fees, where first appellant had stipulated to dismissal that terminated his appeal. Jung v. Jung, 2004, 844 A.2d 1099. Federal Courts ⇨ 1067

When a timely notice of appeal is later dismissed by the appellant, it is as if no appeal had been taken and the Court of Appeals may not exercise jurisdiction to adjudicate the matters raised by the dismissed notice. Jung v. Jung, 2004, 844 A.2d 1099. Federal Courts ⇨ 1067

The jurisdiction of the Court of Appeals to hear appeals from the superior court is defined by statute. Ford v. ChartOne, Inc., 2003, 834 A.2d 875. Federal Courts ⇨ 1061

There is no appeal as of right from judgments of the small claims and conciliation branch; review of such judgments is by application for the allowance of an appeal filed in the Court of Appeals. W.H.H. Trice & Co. v. Faris, 2003, 829 A.2d 189. Courts ⇨ 176.5

The Court of Appeals will grant an application for review of judgment in the small claims and conciliation branch only if it demonstrates apparent error or a question of law, which has not been, but should be, decided by the Court of Appeals. W.H.H. Trice & Co. v. Faris, 2003, 829 A.2d 189. Courts ⇨ 176.5

Court of Appeals may exercise its discretion to hear appeal of trial court's denial of motion to dismiss on grounds of forum non conveniens upon certification from Superior Court, pursuant to statutory procedures; certification procedure is intended to be exceptional and not merely a means of accelerated review for what may appear to be a difficult issue. Rolinski v. Lewis, 2003, 828 A.2d 739. Federal Courts ⇨ 1062

The Court of Appeals does not have jurisdiction to review issues so long as the matter remains open, unfinished, or inconclusive. In re J.W., 2002, 806 A.2d 1232. Federal Courts ⇨ 1062

The general rule that an appeal does not lie from a decree solely for costs is not absolute and should not be enforced when the trial court assumes the power to assess costs not legally assessable as such. Del Rosario v. Wang, 2002, 804 A.2d 292. Federal Courts ⇨ 1062

A challenge to the trial court's statutory authority to award particular costs lies within the Court of Appeals' power to review. Del Rosario v. Wang, 2002, 804 A.2d 292. Federal Courts ⇨ 1062

Court of Appeals had jurisdiction on appeal solely challenging authority to award particular items of costs, such as interpreter's fees, and manner of

awarding fees. *Del Rosario v. Wang*, 2002, 804 A.2d 292. Federal Courts ⇨ 1062

2.5. Moot cases

District of Columbia Court of Appeals would not review issue of competing authority between mayor and the District of Columbia Council in abstract context of challenge to Inspector General Qualifications Amendment Act, which did not involve decision by mayor that continued to have live consequences. *Cropp v. Williams*, 2004, 841 A.2d 328. Federal Courts ⇨ 1061

Although not bound strictly by the “case or controversy” requirements of Article III of the federal Constitution, the District of Columbia Court of Appeals does not normally decide moot cases. *Cropp v. Williams*, 2004, 841 A.2d 328. Federal Courts ⇨ 1061

3. Final orders—In general

Order lifting stay and dismissing without prejudice action brought by former shareholder of cooperative against developer who had acquired cooperative for breach of settlement agreement, rescission of settlement agreement, and injunctive relief was properly before Court of Appeals, on shareholder’s appeal of order, as shareholder’s brief implicitly discussed both this order and prior order dismissing complaint in favor of arbitration pursuant to parties’ settlement agreement and staying case at shareholder’s request, and shareholder specifically listed order lifting stay in her notice of appeal. *Evans v. Dreyfuss Brothers, Inc.*, 2009, 971 A.2d 179. Federal Courts ⇨ 1065

Any lack of finality of an order or judgment is a bar to appellate review over such order or judgment. *Evans v. Dreyfuss Brothers, Inc.*, 2009, 971 A.2d 179. Federal Courts ⇨ 1062

Trial court’s order requiring that tenant pay landlord’s attorney fees, in tenant’s Tenant Opportunity to Purchase Act (TOPA) action against landlord, was not a final, appealable order, where trial court had not determined the amount of attorney fees to be paid. *Linen v. Lanford*, 2008, 945 A.2d 1173. Federal Courts ⇨ 1062

Order staying enforcement of child support order for a specified finite period was a final appealable order, even though the parties and the court contemplated that a further modification of the support order might soon follow; ruling purported to be a final order with respect to the time period specified. *Wilkins v. Bell*, 2007, 917 A.2d 1074. Child Support ⇨ 537

To be final and appealable, an order must dispose of the whole case on its merits, so that the court has nothing remaining to do but to execute the judgment or decree already rendered. *U.S. v. Stephenson*, 2006, 891 A.2d 1076. Criminal Law ⇨ 1023(2)

While the Court of Appeals has jurisdiction over all final orders and judgments of the Superior Court, orders compelling discovery are not final, nor are they interlocutorily appealable under the collateral order doctrine. *Walter E. Lynch & Co.*,

Inc. v. Fuisz, 2004, 862 A.2d 929. Federal Courts ⇨ 1062

The collateral order doctrine, which allows an immediate appeal from a non-final order, is to be applied with caution. *Galloway v. Clay*, 2004, 861 A.2d 30. Federal Courts ⇨ 1062

The requirement that the trial court proceeding be concluded in its entirety before an appeal may be taken serves the important policy goals of preventing the unnecessary delays resultant from piecemeal appeals and refraining from deciding issues which may eventually be mooted by the final judgment. *Galloway v. Clay*, 2004, 861 A.2d 30. Federal Courts ⇨ 1062

Normally, an order or judgment is deemed to be “final,” and therefore appealable, only if it disposes of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered. *Galloway v. Clay*, 2004, 861 A.2d 30. Federal Courts ⇨ 1062

Lack of finality of lower court judgment is a bar to appellate jurisdiction; requirement of finality serves the important policy goals of preventing the unnecessary delays resultant from piecemeal appeals and refraining from deciding issues which may eventually be mooted by the final judgment. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1062

In determining finality of trial court order for purposes of appellate review, the appellate court is concerned not merely with the interests of the immediate parties but, more importantly, with those interests that pertain to the smooth functioning of judicial system. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1062

Normally, an order or judgment is deemed to be final, for purposes of determining appellate jurisdiction, only if it disposes of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1062

An order denying a motion to dismiss ordinarily does not meet standard of finality and usually is not immediately appealable, for such a ruling does not terminate the action but instead allows it to proceed. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1062

Any lack of finality of an order or a judgment is a bar to appellate review over such issue or order. *Heard v. Johnson*, 2002, 810 A.2d 871. Federal Courts ⇨ 1062

An order is final, and thus subject to appellate review, when it disposes of the whole case on its merits so that the court has nothing remaining to do but execute the judgment or decree already rendered. *Heard v. Johnson*, 2002, 810 A.2d 871. Federal Courts ⇨ 1062

The collateral order doctrine is a narrow exception to the requirement that all orders and judgments must be final in order to allow for appellate review, and under such doctrine, a decision is appealable if it falls within that small class which finally determine claims of right separable from,

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and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. *Heard v. Johnson*, 2002, 810 A.2d 871. Federal Courts ⇨ 1062

Under the collateral order doctrine, a ruling such as an order denying a motion to dismiss may be appealable if it has a final and irreparable effect on the important rights of the parties. *Heard v. Johnson*, 2002, 810 A.2d 871. Federal Courts ⇨ 1062

"Final orders," for appellate purposes, are those that dispose of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered. *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 2001, 774 A.2d 332. Federal Courts ⇨ 1062

To be reviewable, judgment or decree must not only be final, but also complete, that is, final not only as to all parties, but as to whole subject matter and all the causes of action involved, and general rule is that order stating sanction, quantum of relief, or the like is the one with requisite finality. *In re D.M.*, 2001, 771 A.2d 360. Federal Courts ⇨ 1062

Order is final, for purposes of appeal, only if it disposes of whole case on its merits, so that court has nothing remaining to do, but to execute the judgment or decree already rendered. *In re D.M.*, 2001, 771 A.2d 360. Federal Courts ⇨ 1062

In the interest of avoiding piecemeal appeals and refraining from deciding issues which may eventually be mooted by final judgment, the Court of Appeals will not review trial court rulings which are not final. *Medlantic Health Care Group, Inc. v. Cunningham*, 2000, 755 A.2d 1032. Federal Courts ⇨ 1062

An exception to the general prohibition against appeals from non-final orders has been carved out to allow for expressly limited certification of questions to the Court of Appeals, even though these matters fall short of being final orders or judgments. *Medlantic Health Care Group, Inc. v. Cunningham*, 2000, 755 A.2d 1032. Federal Courts ⇨ 1062

4. — Dismissal of pleadings, final orders

Trial court's order dismissing complaint brought by former shareholder of cooperative against developer who had acquired cooperative for breach of settlement agreement, rescission of settlement agreement, and injunctive relief in favor of arbitration pursuant to parties' settlement agreement was not a final, appealable order; order dismissed shareholder's complaint, thereby compelling arbitration, but stayed her case. *Evans v. Dreyfuss Brothers, Inc.*, 2009, 971 A.2d 179. Federal Courts ⇨ 1062

Order dismissing with prejudice indictment charging defendant with carrying pistol without license based on alleged violation of defendant's right to speedy trial was final and appealable, notwithstanding pendency of motion for reconsideration; order of dismissal was appealable by itself, denial of motion for reconsideration was not appealable, and motion for reconsideration would not have tolled time for taking appeal. *U.S. v. Stephenson*, 2006, 891 A.2d 1076. Criminal Law ⇨ 1024(3)

The denial of a motion to dismiss a complaint is usually not immediately appealable. *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 2001, 774 A.2d 332. Federal Courts ⇨ 1062

Under the collateral order doctrine, a ruling such as the denial of a motion to dismiss may be appealable if it has a final and irreparable effect on important rights of the parties. *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 2001, 774 A.2d 332. Federal Courts ⇨ 1062

5. — Summary judgment, final orders

Trial court's refusal to grant a motion for summary judgment to tenant in action for possession of premises, based on tenant's failure to pay landlord requested amount of rent, was not a final, appealable order. *Estate of Blackwell v. Campbell*, 2009, 983 A.2d 320. Federal Courts ⇨ 1055

Because grant of summary judgment to one party was final judgment, and because such order was appealed, order denying summary judgment to adverse party was also appealable. *District of Columbia v. Helen Dwight Reid Educational Foundation*, 2001, 766 A.2d 28. Federal Courts ⇨ 1062

6. — Probation appeals, final orders

Even if the appeal by testator's alleged common law wife, of the trial court's order dismissing as time-barred her renewed claims that the wills admitted to probate were forged and that she was testator's common law wife, were prematurely filed as appeals from nonfinal orders, the subsequent entry of a final judgment in the entire case had the effect of ripening the appeal, thereby giving the appellate court jurisdiction. *In re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1065

Order removing personal representative of estate and appointing successor personal representative was final order that was immediately appealable, though residuary beneficiaries subsequently filed motion to amend the order, where the motion requested only explanations of why there was good cause for removing personal representative and why personal representative's wife had not been appointed as his successor. *In re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Executors And Administrators ⇨ 35(19)

Personal representative of probate estate, after his removal from office, lacked standing to appeal probate court's appointment of successor personal representative; personal representative sustained no injury to his legal rights or to any legally protected relationship from appointment of successor personal representative. *In re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct.

1075, 540 U.S. 1109, 157 L.Ed.2d 896. Executors And Administrators ⇨ 37(4)

8. — Domestic relations appeals, final orders

Order of magistrate judge, in proceeding on competing adoption petitions, denying maternal grandmother's adoption petition, waiving biological parents' consent to foster parents' adoption petition, and ordering Child and Family Services Agency (CFSA) to make necessary preparations to proceed to a final decree on foster parents' petition, was not final for purposes of grandmother's motion for review by a family court judge, and thus order of family court judge dismissing grandmother's first motion for review was not a final order that triggered 30-day period for grandmother to appeal to the Court of Appeals, as such order of the magistrate judge did not dispose of the whole case on its merits. In re C.A.B., 2010, 4 A.3d 890. Adoption ⇨ 15

Putative father's claim that the trial court erred in failing to grant him immediate custody of neglected minor child was not properly before the Court of Appeals, as there was no final order or judgment on custody to review. In re J.W., 2002, 806 A.2d 1232. Infants ⇨ 2366

In the context of child neglect proceedings after the court has made an adjudication of neglect, an order that is merely a step toward restoration of physical custody, termination of parental rights, or adoption is not a "final order" and therefore is not appealable. In re K.M.T., 2002, 795 A.2d 688. Infants ⇨ 2367

Permanency planning orders in child neglect proceedings, changing the goal of the proceedings from reunification to long-term foster care, were not "final orders" that were appealable. In re K.M.T., 2002, 795 A.2d 688. Infants ⇨ 2373

An order changing a permanency planning goal in a child neglect proceeding is not a "final order" that is appealable; such an order merely sets goals for the children and does not affect the parents' substantive rights in any way. In re K.M.T., 2002, 795 A.2d 688. Infants ⇨ 2370

An order waiving a birth parent's consent to adoption is not a final order and may not be appealed until the adoption proceedings have been concluded; the reason is that only upon a final decree of adoption are the "rights and duties" of natural parents terminated. In re S.J., 2001, 772 A.2d 247. Adoption ⇨ 15

Birth father could not immediately appeal order waiving his consent to adoption; no order terminating his parental rights had been entered, and, even though trial court later terminated father's visitation rights, father did not appeal that order. In re S.J., 2001, 772 A.2d 247. Adoption ⇨ 15

At least in some circumstances, a parent who has been denied all contact with her child is not precluded from challenging that denial on appeal until her parental rights have been terminated or an order of adoption has been entered. In re S.J., 2001, 772 A.2d 247. Adoption ⇨ 15; Infants ⇨ 2364

Order waiving birth father's consent to adoption was not appealable as order in nature of injunction; waiver of consent dispensed with need for parental consent to adoption, but it was not injunction. In re S.J., 2001, 772 A.2d 247. Adoption ⇨ 15

Trial judge's refusal to order investigation, proposed by counsel for mother, into the circumstances of teenager's pregnancy and motherhood was neither a death knell to the mother's claims, for purposes of death knell exception to finality requirement, nor an appealable order; mother was free to move court to award her custody of teenager, and, if she filed such motion, and if this relief was denied, mother's challenge to court's refusal to order investigation would merge into appeal from denial of her motion for custody and could therefore be entertained at that point. In re D.M., 2001, 771 A.2d 360. Infants ⇨ 2364

Trial judge's order refusing to modify an earlier ruling in which she had barred any visitation between teenager and her mother and prohibiting any visitation between teenager and her mother's sister was final, for purposes of appeal, with respect to the visitation issue; no motion for termination of parental rights had been filed, and no petition to adopt teenager was pending, judge's decision prohibited visitation under entirely new circumstances, namely teenager's motherhood, and denial of visitation had continued for more than four years. In re D.M., 2001, 771 A.2d 360. Infants ⇨ 2373

Mother who has been denied all contact with her child is not precluded from challenging that denial on appeal until her parental rights have been terminated or an order of adoption has been entered. In re D.M., 2001, 771 A.2d 360. Infants ⇨ 2368

9.5. — Zoning, final orders

Order of Board of Zoning Adjustment (BZA) that ruled in favor of neighbor in appeal of issuance of permit by Department of Consumer and Regulatory Affairs (DCRA) that allowed property owners to build retaining wall was sufficiently "final" for Court of Appeals to review it, even though order mandated no specific relief; property owners were severely restricted in the use of their land by BZA's order and thus were aggrieved by order. Economides v. District of Columbia Bd. of Zoning Adjustment, 2008, 954 A.2d 427. Zoning And Planning ⇨ 1582

10. — Medical-related appeals, final orders

Order denying patients' motions to dismiss civil recommitment petitions was not a final, appealable order; issue of whether patients were a danger to themselves or others due to their purported mental illnesses was never reached by the trial court, so the cases were not decided on the merits. In re Brown, 2009, 974 A.2d 884. Federal Courts ⇨ 1062

Order denying patients' motions to dismiss civil recommitment petitions was not functional equivalent of a denial of a writ of habeas corpus, as required to show that denial of patients' motions

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was a final, appealable order; patients did not request their release, the relief for which writ was intended. In *re Brown*, 2009, 974 A.2d 884. *Mental Health* ⇨ 60

Order of probate court vacating attorney's appointment as general conservator for patient and re-appointing attorney as special conservator in order to wind down government involvement in patient's affairs, following successful appeal by patient's niece, who had the power to make health care decisions for patient under patient's health care proxy, was a final order which patient's niece was required to appeal within 30 days, and thus Court of Appeals had no jurisdiction over niece's appeal of such order when niece's notice of appeal was filed 18 months later; under probate rules an order appointing a special conservator was a final order, and under its rules Court of Appeals lacked jurisdiction to consider an appeal of an order filed more than 30 days after the entry of the order being appealed. In *re Orshansky*, 2008, 952 A.2d 199. *Federal Courts* ⇨ 1065

Before expert testimony about the standard of care may be admitted, it must meet basic standards of competency and relevancy, and the grounded reference to a national standard is a requisite for any opinion regarding standard of care in a medical malpractice case. *Snyder v. George Washington University*, 2006, 890 A.2d 237. *Evidence* ⇨ 512; *Evidence* ⇨ 538

11. Interlocutory or preliminary orders—In general

Statute requiring the superior court to conduct its business according to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure does not grant authority for rule allowing the Court of Appeals to permit an appeal from an order of the superior court granting or denying class action certification, even if the superior court does not certify that the interlocutory order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation or case; the statute addresses only the conduct of business in the superior court, and the Court of Appeals' jurisdiction is not part of the business of the superior court. *Ford v. ChartOne, Inc.*, 2003, 834 A.2d 875. *Federal Courts* ⇨ 1062

Rule was void in allowing the Court of Appeals to permit an appeal from an order of the superior court granting or denying class action certification, even if the superior court does not certify that the interlocutory order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation or case; no statute authorized the rule. *Ford v. ChartOne, Inc.*, 2003, 834 A.2d 875. *Federal Courts* ⇨ 1062

The trial judge's certification that interlocutory order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal may

materially advance the ultimate termination of the litigation or case is an indispensable precondition for the Court of Appeals to exercise its discretion to allow an interlocutory appeal. *Ford v. ChartOne, Inc.*, 2003, 834 A.2d 875. *Federal Courts* ⇨ 1062

The trial judge's certification that interlocutory order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation or case is a jurisdictional condition and cannot be abrogated by rule allowing the Court of Appeals to permit an appeal from an order of the superior court granting or denying class action certification. *Ford v. ChartOne, Inc.*, 2003, 834 A.2d 875. *Federal Courts* ⇨ 1062

Interlocutory orders are appealable if they have a final and irreparable effect on important rights of parties. In *re Ti.B.*, 2000, 762 A.2d 20, on subsequent appeal 878 A.2d 1255. *Federal Courts* ⇨ 1062

If interlocutory order concerns injunction, or has practical effect of granting or refusing injunction, and imposes a sufficiently serious injury to justify an immediate appeal, order is appealable. *District of Columbia v. Eastern Trans-Waste of Maryland, Inc.*, 2000, 758 A.2d 1. *Federal Courts* ⇨ 1062

Court of Appeals had jurisdiction to entertain interlocutory appeals of order modifying and extending temporary restraining order and granting partial summary judgment for solid waste and recycling hauler as to solid waste facility charge, in hauler's action against District of Columbia, seeking declaratory, injunctive, and other relief concerning application and enforcement of Solid Waste Facility Permit Act and Illegal Dumping Enforcement Act. *District of Columbia v. Eastern Trans-Waste of Maryland, Inc.*, 2000, 758 A.2d 1. *Federal Courts* ⇨ 1062

12. — Affecting possession of property, interlocutory or preliminary orders

In appeal from trial court's order granting condemnor's motion for immediate possession, which order was appealable as an interlocutory order changing or affecting possession of property, appellate court would exercise pendent appellate jurisdiction over trial court's order granting condemnor's motion to strike condemnee's defenses, which order ordinarily would not be immediately appealable; trial court explicitly linked its grant of immediate possession to its previous decision to strike the defenses, appellate court would be unable to meaningfully review the order transferring possession without considering the predicate decision to strike condemnee's defenses, and record on appeal was adequate for review of order striking the defenses. *Franco v. National Capital Revitalization Corp.*, 2007, 930 A.2d 160. *Federal Courts* ⇨ 1061

Trial court's order granting condemnor's motion for immediate possession was an interlocutory order changing or affecting the possession of property, as basis for statutory appellate jurisdiction.

Franco v. National Capital Revitalization Corp., 2007, 930 A.2d 160. Eminent Domain ⇨ 253(1)

Order, which ruled on estate and trustees' adverse possession claims and granted adjoining landowners an injunction prohibiting trustees from parking in easement, was interlocutory, for the purpose of limitations period for filing appeals, and thus the time for filing appeal of injunction order did not begin to run until final order was entered; order did not address adjoining landowners' claim that trustees tortiously interfered with landowners' use and enjoyment of their easement, or landowners' claim against estate for negligent misrepresentation. *Patterson v. Sharek*, 2007, 924 A.2d 1005. Federal Courts ⇨ 1065

Adjoining landowners' failure to appeal injunction within 30 days of entry of interlocutory order granting injunction did not preclude appeal challenging injunction; interlocutory appeals were permissive and not mandatory, and adjoining landowner timely filed an appeal of injunction after final order addressing all issues between the parties was entered. *Patterson v. Sharek*, 2007, 924 A.2d 1005. Federal Courts ⇨ 1065

13.5. Collateral order exception

Court of Appeals did not have jurisdiction under collateral order doctrine to consider contractor's interlocutory appeal from trial court order denying his motion for summary judgment, which asserted immunity under judicial proceeding privilege from property owner's action challenging contractor's complaint for enforcement of mechanic's lien as unlawful and a slander of title; judicial proceedings privilege did not protect a sufficiently substantial public interest, and deferring review until final judgment would not so imperil the interest as to justify the cost of allowing immediate appeal. *McNair Builders, Inc. v. Taylor*, 2010, 3 A.3d 1132. Federal Courts ⇨ 1062

Non-final order denying patients' motions to dismiss civil recommitment petitions did not fall within collateral order exception to the finality requirement, and, thus, was not appealable; validity of recommitment petitions and procedures laid out in the Council's laws would be fully reviewable on appeal from an adverse final judgment. *In re Brown*, 2009, 974 A.2d 884. Federal Courts ⇨ 1062

14. Contempt or sanctions

Dismissal with prejudice of indictment charging defendant with carrying pistol without license was not appropriate sanction for prosecutor's failure to secure presence of defendant, incarcerated and facing trial in Maryland, based on alleged interference with defendant's right to speedy trial, where defendant never asserted speedy trial violation, counsel's motion to dismiss for failure to prosecute did not request that it be with prejudice, and dismissal was rendered without any consideration of *Barker* speedy trial factors. *U.S. v. Stephenson*, 2006, 891 A.2d 1076. Criminal Law ⇨ 577.16(11)

Elements of criminal contempt are (1) willful disobedience (2) of a court order (3) causing an

obstruction of the orderly administration of justice. *In re Ryan*, 2003, 823 A.2d 509. Contempt ⇨ 20

Conviction for criminal contempt was supported by evidence that defendant, while under court order suspending her license to practice law in District of Columbia, entered into contracts with three witnesses to obtain immigration papers for their relatives, that language in contracts emphasized defendant's knowledge and mastery of the law, that she affirmatively represented herself to those witnesses as an attorney and used letterhead that suggested the name of a law firm, that she referred to witnesses as "clients," and that contracts charged \$10,000 to \$15,000 for services to be rendered. *In re Ryan*, 2003, 823 A.2d 509. Attorney And Client ⇨ 60

The Court of Appeals had jurisdiction to review and enjoin the activities of nonlawyers which constitute practicing law in the District of Columbia. *In re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Injunction ⇨ 1504

Single judge of appellate court was empowered to act in adjudicating and sentencing suspended attorney for violating court's interim suspension order, though attorney claimed that judge lacked jurisdiction because federal constitution required three-judge division of court to hear criminal contempt proceeding, given authority conferred by contempt powers statute to single judge of appellate court to punish for disobedience of an order. *In re Richardson*, 2000, 759 A.2d 649. Contempt ⇨ 36

Suspended attorney was subject to jurisdiction of appellate court, despite claim that he was not personally served with bar counsel's motion for order to show cause or court's order to show cause, since attorney was a member of bar who had been suspended by the appellate court. *In re Richardson*, 2000, 759 A.2d 649. Contempt ⇨ 55

Evidence was sufficient to support attorney's conviction for criminal contempt, on charge that he practiced law during period of suspension, where attorney admitted having had actual notice of suspension, and thereafter appeared before judge, and made filings in connection with probate matter, which took him beyond 30-day grace period attorney thought he had to wind up his affairs before suspension order took effect. *In re Richardson*, 2000, 759 A.2d 649. Contempt ⇨ 60(3)

Person who willfully disobeys a court order may be adjudicated in contempt. *In re Richardson*, 2000, 759 A.2d 649. Contempt ⇨ 20

Appellate court has the power to enforce its orders with contempt. *In re Richardson*, 2000, 759 A.2d 649. Contempt ⇨ 34

Criminal contempt proceedings may be prosecuted by private attorneys appointed by the court for that purpose. *In re Peak*, 2000, 759 A.2d 612, amended on denial of rehearing 829 A.2d 464. Contempt ⇨ 41.1

Private attorneys appointed to prosecute a criminal contempt action represent the United States, not the party that is the beneficiary of the court

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order allegedly violated. In *re Peak*, 2000, 759 A.2d 612, amended on denial of rehearing 829 A.2d 464. Contempt ⇨ 41.1

Criminal contempt proceedings which arise out of civil litigation are between the defendant and the public, rather than a part of the original action. In *re Peak*, 2000, 759 A.2d 612, amended on denial of rehearing 829 A.2d 464. Contempt ⇨ 40

16. Aggrieved parties

Decedent's alleged common law wife, after forfeiting her bequest by bringing an unsuccessful will contest, was no longer an interested party under the probate code with standing to appeal, as of right, post-forfeiture decisions of the probate court which did not concern her directly. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Wills ⇨ 361

A person is "aggrieved," as basis for standing to appeal a trial court order, when that person's legal rights have been infringed or denied. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1061

If a person has suffered no injury to his legal rights or to some legally protected relationship, he has no standing to appeal. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1061

To meet the minimum requirements of a case and controversy under District of Columbia law, a plaintiff must show that it has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant, that the injury fairly can be traced to the challenged action, and that it is likely to be redressed by a favorable decision. *Board of Directors, Washington City Orphan Asylum v. Board of Trustees, Washington City Orphan Asylum*, 2002, 798 A.2d 1068. Federal Courts ⇨ 1052.1

In order to meet the minimum requirements of a case or controversy, a plaintiff must show that (1) she has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant, (2) the injury fairly can be traced to the challenged action, and (3) the injury is likely to be redressed by a favorable decision. *Fisher v. Government Employees Ins. Co.*, 2000, 762 A.2d 35. Federal Courts ⇨ 1052.1

Under prudential principles of standing, a plaintiff may assert only its own legal rights and may assert only interests that fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. *Fisher v. Government Employees Ins. Co.*, 2000, 762 A.2d 35. Federal Courts ⇨ 1052.1

17. Errors not affecting substantial rights

Lack of support for trial court's finding, after non-jury trial, that real estate agent had forged the signatures, in sales agreement, of home vendor and vendor's brother who held power of attorney from vendor, which finding was based on trial

court's erroneous recollection of testimony of real estate agent as admitting that signatures on sales agreement were not those of vendor or vendor's brother, did not affect agent's substantial rights, and thus, reversal and remand for new trial were not required, in action against agent for breach of fiduciary duty; core of case was breach of fiduciary duty, not fraud based on forgery, and all damages could be traced to agent's breach of fiduciary duties, e.g., drafting a sales agreement, as undisclosed dual agent for purchaser and vendor, with highly unusual terms favoring purchaser. *Jenkins v. Strauss*, 2007, 931 A.2d 1026. Federal Courts ⇨ 1066

Any error by trial judge in not exploring further the propriety of detective's alleged conduct of telling prospective defense witness that if she testified in certain manner, detective would appear in court and falsely testify that witness had told him more inculpatory version of events, did not affect defendant's substantial rights in prosecution for destruction of property; defense counsel never suggested that witness would have testified but for her intimidation by the detective, and trial judge found defendant guilty based almost entirely on the testimony of State's eyewitness, whose testimony defendant did not suggest could have been impeached by any testimony intimidated witness was prepared to offer. *Scott v. U.S.*, 2006, 898 A.2d 899. Criminal Law ⇨ 2020

When the result is correct as a matter of law, a lower court decision may be upheld despite the fact that the court relied upon a wrong ground or gave a wrong reason. *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Science, Inc.*, 2004, 858 A.2d 457. Federal Courts ⇨ 1066

In order to show plain error, the party alleging error must demonstrate that the trial court's decision was plainly or obviously wrong and that the error was so serious that failure to correct it will result in a miscarriage of justice. In *re S.S.*, 2003, 821 A.2d 353. Federal Courts ⇨ 1064

Substitute judge's error in not certifying familiarity with the record before denying motion to alter or amend the award of costs did not prejudice the responsible parties, where the motion made an argument based on a factually incorrect premise and made arguments raised before the trial judge in opposition to costs before her illness. *Del Rosario v. Wang*, 2002, 804 A.2d 292. Federal Courts ⇨ 1066

There was no plain error as to admission of Housing and Urban Development (HUD) inspection report in home purchasers' action against vendor and real estate agent, even if the report was hearsay; if purchasers had made a timely hearsay objection in the trial court, the author of the report could have been subpoenaed and made available to testify at trial. *Dean v. Garland*, 2001, 779 A.2d 911, certiorari denied 122 S.Ct. 2591, 536 U.S. 924, 153 L.Ed.2d 780. Federal Courts ⇨ 1064

Not every admission of inadmissible hearsay or other evidence can be considered to be reversible

error unavoidable through limiting instructions. *Coleman v. U.S.*, 2001, 779 A.2d 297. Criminal Law § 1169.5(5)

Failure to give immediate corrective instruction upon erroneous admission of "other crimes" evidence in form of testimony that defendant had set fires before in his father's house could not be deemed harmless in prosecution for felony malicious destruction of property, alleging that defendant again set that house on fire; case against defendant was circumstantial, and defense expert testified at length about inadequacies of government investigation and proof to establish that fire was intentionally set or to have originated as government claimed. *Coleman v. U.S.*, 2001, 779 A.2d 297. Criminal Law § 1172.1(5)

Under *Kotteakos*, which is applied to those instances in which the defendant was not wholly deprived of an opportunity to cross-examine a witness, the test for harmless error is whether a reviewing court can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. *Villa v. District of Columbia*, 2001, 778 A.2d 309. Criminal Law § 1170.5(5)

Driver was entitled to new trial on her personal injury claim since trial judge abused her discretion by failing to strike motorist's closing argument suggesting, without a factual predicate showing fraud or frivolous complaints, that, because of two prior claims, driver had motive to file personal injury suit against motorist and since trial court's decision to accept juror's ambiguous claim that she could be impartial despite her very unpleasant experience as a defendant in a lawsuit, and her attitudes toward tort reform and plaintiffs, did not constitute harmless error. *Lewis v. Voss*, 2001, 770 A.2d 996. Federal Courts § 1067

There was no error, plain or otherwise, in trial court's not sua sponte excluding, as evidence of uncharged criminal conduct, testimony of government's witness that defendant "didn't come to school regular," as failure to "come to school regular" was not a crime. *Washington v. U.S.*, 2000, 760 A.2d 187. Criminal Law § 1036.1(3.1)

Under the plain error doctrine, reversal is justified only in exceptional circumstances where a miscarriage of justice would otherwise result. *Washington v. U.S.*, 2000, 760 A.2d 187. Criminal Law § 1030(1)

A trial court's failure to give a requested jury instruction is not reversible error where the instructions given properly inform the jury of the applicable legal principles involved. *Timberlake v. U.S.*, 2000, 758 A.2d 978. Criminal Law § 1173.1

18. Procedure, generally

Court of Appeals would permit post-trial amendment of pleadings in breach of contract action to reflect homeowner's claim that home improvement contractor was unlicensed, though trial court might well have acted within its discretion in declining to entertain issue which had not previously been explicitly raised in pretrial documents, as it was

evident from trial court's opinion that question of whether contractor's lack of a license undermined contractor's position was tried on the merits, and that trial court's ruling rested on substantive, rather than procedural grounds. *Norried v. Caribbean Contractors, Inc.*, 2006, 899 A.2d 129. Federal Courts § 1067

The noting of a timely notice of appeal is mandatory and jurisdictional in the Court of Appeals. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts § 1065

Putative father, who did not request an evidentiary hearing, failed to preserve for appellate review claim that trial court should have held an evidentiary hearing before denying visitation with neglected minor child. In re J.W., 2002, 806 A.2d 1232. Infants § 2381

Trial court's factual findings are binding upon the Court of Appeals unless they are clearly erroneous; if the findings are acceptable, the Court of Appeals will not disturb the court's judgment unless it is plainly wrong or without evidence to support it. *Langon v. Reilly*, 2002, 802 A.2d 951. Federal Courts § 1066

Appeal of order granting summary judgment noted within thirty days of date order was actually docketed, and thus, appeal was timely even though the judgment and order were electronically filed more than 30 days preceding date on which appeal was noted. *Dobbins v. Burford*, 2002, 799 A.2d 389. Federal Courts § 1065

Time of service by itself is irrelevant to jurisdiction of the Court of Appeals, and an Administrative Order of the Superior Court does not alter the Court of Appeals' rules regarding the timely noting of an appeal. *Dobbins v. Burford*, 2002, 799 A.2d 389. Federal Courts § 1065

Mother abandoned her appeal of trial court's order, in child neglect proceedings, reducing the frequency of mother's visits with child placed in foster care to once a month, where mother failed to address the issue in either her appellate brief or in a reply brief. In re K.M.T., 2002, 795 A.2d 688. Infants § 2395

Court of Appeals abandoned doctrine of equitable balancing in connection with retroactivity analysis, and adopted firm rule of retroactivity; abrogating *Mendes v. Johnson*, 389 A.2d 781. *Davis v. Moore*, 2001, 772 A.2d 204. Courts § 100(1)

Trial judge abused her discretion by failing to strike motorist's closing argument suggesting, without a factual predicate showing fraud or frivolous complaints, that, because of two prior claims, injured driver had motive to file personal injury suit against motorist. *Lewis v. Voss*, 2001, 770 A.2d 996. Federal Courts § 1052.1

Question of adequacy of service of process on one of several defendants in medical malpractice action should not have been certified for immediate appeal; that question was not one, lacking in precedent, which could be deemed controlling question likely to resolve overall litigation, and, over long term, that kind of appellate review would lead to disruption, delay, and erosion of judicial economy.

§ 11-721

ORGANIZATION AND JURISDICTION OF THE COURTS

Note 18

Medlantic Health Care Group, Inc. v. Cunningham, 2000, 755 A.2d 1032. Federal Courts ⇨ 1062

19. Standard of review

In evaluating whether error affected substantial rights, the standard used by appellate court is whether, when all is said and done, appellate court

can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. Jenkins v. Strauss, 2007, 931 A.2d 1026. Federal Courts ⇨ 1066

§ 11-722. Administrative orders and decisions.

Notes of Decisions

1. In general

As a general matter, appellate court has jurisdiction to review only agency orders or decisions that are final. District of Columbia Dept. of Employment Services v. Vilche, 2007, 934 A.2d 356. Administrative Law And Procedure ⇨ 704

The “exhaustion of remedies doctrine” is distinguishable from the doctrine of primary jurisdiction; the “primary jurisdiction” rule comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body, and in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views. Davis & Associates v. Williams, 2006, 892 A.2d 1144. Administrative Law And Procedure ⇨ 228.1; Administrative Law And Procedure ⇨ 229

The requirement to exhaust administrative remedies is not a rule of jurisdiction. Davis & Associates v. Williams, 2006, 892 A.2d 1144. Administrative Law And Procedure ⇨ 229

Court may invalidate agency action only if it is unsupported by substantial evidence, or if it is arbitrary, capricious, or an abuse of discretion. Harding v. District of Columbia Office of Employee Appeals, 2005, 887 A.2d 33. Administrative Law And Procedure ⇨ 754.1; Administrative Law And Procedure ⇨ 763; Administrative Law And Procedure ⇨ 791

A validly promulgated agency regulation generally has the force of law. Harding v. District of Columbia Office of Employee Appeals, 2005, 887 A.2d 33. Administrative Law And Procedure ⇨ 417

2. Contested cases

Court of Appeals must conduct the identical review of the Office of Employee Appeals' (OEA) decision that Court would undertake if appeal had been heard initially in Court. Harding v. District of Columbia Office of Employee Appeals, 2005, 887 A.2d 33. District Of Columbia ⇨ 7

To uphold the decision of an administrative agency in a contested case under the Administrative Procedure Act, (1) the decision must state findings of fact on each material, contested factual issue, (2) those findings must be based on substantial evidence, and (3) the conclusions of law must follow rationally from the findings. Powell v. District of Columbia Housing Authority, 2003, 818 A.2d 188. Administrative Law And Procedure ⇨

485; Administrative Law And Procedure ⇨ 791; Administrative Law And Procedure ⇨ 796

Court of Appeals' jurisdiction to hear a petition to review a decision by an administrative agency is limited to contested cases. Powell v. District of Columbia Housing Authority, 2003, 818 A.2d 188. Administrative Law And Procedure ⇨ 701

6. Alcohol

Court of Appeals had jurisdiction to consider a petition to review decision of the District of Columbia Housing Authority (DCHA) terminating recipient's eligibility for housing subsidies under the Tenant Assistance Program (TAP), based on allegation that she fraudulently under-reported her income in order to obtain more assistance; Court had jurisdiction to review contested cases, and DCHA's decision was made in a trial-type hearing required by the Constitution. Powell v. District of Columbia Housing Authority, 2003, 818 A.2d 188. District Of Columbia ⇨ 23

9. Housing

Landlord failed to preserve for appellate review his claim that he was lulled into believing that he could file his appeal of the Rental Housing Commission's (RHC) dismissal order after business hours on the tenth and final day of the limitations period for filing an appeal and it would be considered timely, in tenant's action to recover rent charged in excess of lawful rent ceiling, where counsel for landlord failed to raise the lulling doctrine before the RHC, and the record did not contain a motion for reconsideration or affidavit that challenged the RHC's decision under the lulling doctrine. Kamerow v. District of Columbia Rental Housing Com'n, 2006, 891 A.2d 253. Landlord And Tenant ⇨ 200.79

The Rental Housing Commission's (RHC) requirement that a notice of appeal be filed with its office no later than 4:30 p.m. on the last day of the ten-day limitations period in order to be considered timely was not unreasonable or arbitrary, even though landlord argued that there was no after-hours filing system; the municipal regulations provided that the office of the commission would be open daily from 8:30 a.m. to 4:30 p.m. except Saturdays, Sundays, and legal holidays, and that the receipt of a pleading that was not timely filed did not constitute a waiver of the filing requirements. Kamerow v. District of Columbia Rental Housing Com'n, 2006, 891 A.2d 253. Landlord And Tenant ⇨ 200.41; Landlord And Tenant ⇨ 200.69; Landlord And Tenant ⇨ 200.79

ORGANIZATION AND JURISDICTION OF THE COURTS

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Note 1

The Court of Appeals had jurisdiction to review landlord's appeal of the Rental Housing Commission (RHC) order dismissing as untimely his appeal of department of consumer and regulatory affairs (DCRA) order, which found in favor of tenants in their action to recover rent charged in excess of lawful rent ceiling, where landlord filed his appeal within the 30-day deadline governing petitions for review of agency orders. *Kamerow v. District of Columbia Rental Housing Com'n*, 2006, 891 A.2d 253. Landlord And Tenant ⇨ 200.79

Court of Appeals had jurisdiction to consider a petition to review decision of the District of Columbia Housing Authority (DCHA) terminating recipient's eligibility for housing subsidies under the Tenant Assistance Program (TAP), based on allegation that she fraudulently under-reported her income in order to obtain more assistance; Court had jurisdiction to review contested cases, and DCHA's decision was made in a trial-type hearing required by the Constitution. *Powell v. District of Columbia Housing Authority*, 2003, 818 A.2d 188. District Of Columbia ⇨ 23

§ 11-723. Certification of questions of law.

UNIFORM CERTIFICATION OF QUESTIONS OF LAW ACT (1967)

Table of Jurisdictions Wherein Act Has Been Adopted

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 12.

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama			Ala.Rules of App.Proc., Rule 18.
Alaska			Alaska Rules of Appellate Procedure, Rule 407.
Arizona	1984, c. 111	8-3-1984	A.R.S. §§ 12-1861 to 12-1867.
Colorado		4-1-1970	Colo.App.Rules, Rule 21.1.
District of Columbia ...	P.L. 99-573	10-28-1986	D.C. Official Code, 2001 Ed. § 11-723.
Florida		3-1-1961	Rules of App.Proc., Rule 9.150.
Georgia			O.C.G.A. § 15-2-9.
Iowa	1979, S.F. 294	1-1-1980	I.C.A. §§ 684A.1 to 684A.11.
Kansas	1979, c. 181	7-1-1979	K.S.A. §§ 60-3201 to 60-3212.
Kentucky		9-1-1978	Rules of Civil Procedure, Rule 76.37.
Louisiana	1972, No. 84		LSA-R.S. 13:72.1; Sup.Ct.Rule 12.
Maine		1-1-2001	Rules of Appellate Proc., Rule 25.
Massachusetts		11-1-1971	Rules of Supreme Judicial Court, General Rule 1:03.
Mississippi		8-1-1980	Rules of Appellate Procedure, Rule 20.
New Hampshire		4-2-1968	RSA 490: Supreme Ct.Rules, Rule 34.
New Mexico	Sup.Ct. Order 9-16-1986		NMRA, Rules of Appellate Procedure, Rule 12-607.
North Dakota		2-15-1977	Rules of App.Proc., Rule 47.
Ohio		7-15-1988	Supreme Court Rules of Practice, Rule XVIII.
Oregon	1983, c. 103		ORS 28.200 to 28.255.
Rhode Island			Supreme Court Rules, Article I, Rule 6.
South Dakota	1984, c. 154		SDCL 15-24A-1 to 15-24A-11.
Washington		4-24-1974	West's RCWA 2.60.010 to 2.60.900.
Wisconsin	Sup. Ct. Order 6-16-1982	1-1-1983	W.S.A. 821.01 to 821.12.
Wyoming	1976, c. 36		Rules of Appellate Procedure, Rules 11.01 to 11.07.

Notes of Decisions

1. In general

Certification of question to District of Columbia Court of Appeals was warranted, as to whether petition sent to federal government agency located in District provided basis for establishing personal jurisdiction over petitioner when plaintiff has alleged that petition fraudulently induced unwarranted government action against it, since scope of "government contacts" exception to District's per-

sonal jurisdiction statute was uncertain and resolution of question could affect numerous individuals and corporations that petitioned the federal government. *Companhia Brasileira Carbureto de Calcio v. Applied Indus. Materials Corp.*, C.A.D.C. 2011, 640 F.3d 369, 395 U.S.App.D.C. 106, certified question answered 35 A.3d 1127, answer to certified question conformed to 2012 WL 555650. Federal Courts ⇨ 392

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Note 1

ORGANIZATION AND JURISDICTION OF THE COURTS

In suit that was brought by architect not licensed to practice architecture in District of Columbia to recover for services that she provided within the District on breach of contract or quantum meruit theory, Court of Appeals would certify to District of Columbia Court of Appeals, as question of extreme public importance, the question of whether, under District of Columbia law, an architect was barred from recovering on contract to perform architectural services in the District or in quantum meruit for architectural services rendered in the District because architect began negotiating for contract, entered into contract, or performed such services while licensed to practice architecture in another jurisdiction, but not in the District. *Sturdza v. United Arab Emirates*, C.A.D.C.2002, 281 F.3d 1287, 350 U.S.App.D.C. 154, 62 U.S.P.Q.2d 1071, petition for certiorari filed, case considered closed by u.s. supreme court, certified question answered 11 A.3d 251, answer to certified question conformed to 412 Fed.Appx. 317, 2011 WL 1099938, rehearing en banc denied, certiorari denied 132 S.Ct. 407, 181 L.Ed.2d 266, rehearing denied 132 S.Ct. 870, 181 L.Ed.2d 568. Federal Courts ⇌ 392

In deciding whether to certify question to the District of Columbia Court of Appeals, federal Court of Appeals asks whether District of Columbia law is genuinely uncertain with respect to the dispositive question, and whether the case is one of extreme public importance. *Nationwide Mut. Ins. Co. v. Richardson*, C.A.D.C.2001, 270 F.3d 948, 348 U.S.App.D.C. 124, certified question answered 826 A.2d 310, rehearing granted, opinion vacated 832 A.2d 752, vacated pursuant to settlement 844 A.2d 344. Federal Courts ⇌ 392

Federal district court sitting in District of Columbia District of Columbia did not have authority to certify question to the District of Columbia Court of Appeals, and thus, had to resolve issue of District of Columbia law as it believed the District of Columbia Court of Appeals would. *Hoehn v. U.S.*, 2002, 217 F.Supp.2d 39. Federal Courts ⇌ 390; Federal Courts ⇌ 392

The District of Columbia Court of Appeals is not bound by decisions of the Superior Court. *District of Columbia v. Gould*, 2004, 852 A.2d 50. Federal Courts ⇌ 1061

Pretrial certification for appellate review of trial court's denial of motion to dismiss on grounds of forum non conveniens is particularly appropriate, when a close question turns on the proper evaluation of the public interest factors. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇌ 1062

Court of Appeals may exercise its discretion to hear appeal of trial court's denial of motion to dismiss on grounds of forum non conveniens upon certification from Superior Court, pursuant to statutory procedures; certification procedure is intend-

ed to be exceptional and not merely a means of accelerated review for what may appear to be a difficult issue. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇌ 1062

2. Tort cases

On motion to enforce settlement agreement in Title VII action brought in District of Columbia federal court, certification was warranted on question of whether under District of Columbia law, a client is bound by a settlement agreement negotiated by her attorney when the client has not given the attorney actual authority to settle the case on those terms, but has authorized the attorney to attend a settlement conference before a magistrate judge and to negotiate on her behalf, and when the attorney leads the opposing party to believe that the client has agreed to those terms. *Makins v. District of Columbia*, C.A.D.C.2002, 277 F.3d 544, 349 U.S.App.D.C. 303, certified question answered 838 A.2d 300, rehearing granted, opinion vacated 855 A.2d 280, opinion superseded on rehearing 861 A.2d 590, answer to certified question conformed to 389 F.3d 1303, 363 U.S.App.D.C. 471. Federal Courts ⇌ 660.5

In declaratory judgment action brought by insurer, Court of Appeals for the District of Columbia Circuit would certify to the District of Columbia Court of Appeals the question of whether, under District of Columbia law, a liability insurance policy's pollution exclusion clause applied to injuries arising from alleged carbon monoxide poisoning; District of Columbia law presented no discernable path for the federal Court of Appeals to follow in determining scope of clause, courts across the nation were hopelessly divided over whether clause was ambiguous as applied to carbon monoxide and other fumes, and issue was important to the public and likely to recur, given clause's appearance in standard commercial comprehensive general liability policies and its potential to affect the insurance coverage of most businesses in the District. *Nationwide Mut. Ins. Co. v. Richardson*, C.A.D.C.2001, 270 F.3d 948, 348 U.S.App.D.C. 124, certified question answered 826 A.2d 310, rehearing granted, opinion vacated 832 A.2d 752, vacated pursuant to settlement 844 A.2d 344. Federal Courts ⇌ 392

Court of Appeals certified question to Maryland Court of Appeals as to whether site owner, which was a public transportation authority, was a "statutory employer" under the Maryland Workers' Compensation Act and hence immune from suit alleging negligence; Court noted there was no controlling Maryland appellate decision, constitutional provision, or statute, and that issue was one of general importance. *Rodrigues-Novo v. Recchi America, Inc.*, 2003, 838 A.2d 1135, certified question answered 846 A.2d 1048, 381 Md. 49, answer to certified question conformed to 853 A.2d 145. Federal Courts ⇌ 1067

SUBCHAPTER III. MISCELLANEOUS PROVISIONS.

§ 11-741. Contempt powers.

Notes of Decisions

1. In general

Lack of injury to trade name owner since it allegedly was commercially inactive and was not using the name was no defense to civil contempt against competitor for violating consent decree that prohibited competitor from conducting business in the District of Columbia in the owner's corporate name; the settlement agreement entitled the owner to competitor's profits without proof of actual injury if the competitor conducted business in the District of Columbia using owner's name. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 28(1)

Elements of criminal contempt are (1) willful disobedience (2) of a court order (3) causing an obstruction of the orderly administration of justice. *In re Ryan*, 2003, 823 A.2d 509. Contempt ⇨ 20

Conviction for criminal contempt was supported by evidence that defendant, while under court order suspending her license to practice law in District of Columbia, entered into contracts with three witnesses to obtain immigration papers for their relatives, that language in contracts emphasized defendant's knowledge and mastery of the law, that she affirmatively represented herself to those witnesses as an attorney and used letterhead that suggested the name of a law firm, that she referred to witnesses as "clients," and that contracts charged \$10,000 to \$15,000 for services to be rendered. *In re Ryan*, 2003, 823 A.2d 509. Attorney And Client ⇨ 60

Nonlawyer was estopped from relitigating merit of injunction against the unauthorized practice of law that formed basis of civil contempt order, including his broad claim that court and judge unlawfully restricted his representation of clients before administrative agencies. *In re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Judgment ⇨ 644

Neither federal Constitution nor any statute, entitled nonlawyer who alleged violated injunction against unauthorized practice of law to a jury trial in a civil contempt proceeding. *In re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Jury ⇨ 24.5

Even assuming injunction against nonlawyer's unauthorized practice of law was invalid, nonlawyer lawfully could be adjudged guilty of criminal contempt for failure to comply with injunction. *In re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Injunction ⇨ 1746

Although Committee on Unauthorized Practice of Law (CUPL) often initiated contempt proceedings, fact United States Attorney initiated request for a show cause order and prosecuted contempt charge against nonlawyer at behest of Court of Appeals had no effect upon jurisdiction of Court to hold nonlawyer in contempt for violating injunctions against unauthorized practice of law. *In re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Injunction ⇨ 1762

Government presented sufficient evidence to warrant a finding of criminal contempt against nonlawyer for violating injunctions against unauthorized practice of law, including evidence that nonlawyer had referred to himself as a former administrative law judge in publication and advertisement, and that nonlawyer induced client to believe she was being represented by attorney. *In re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Injunction ⇨ 1746

A person who willfully disobeys a court order may be adjudicated in contempt. *In re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Contempt ⇨ 20

Upon adjudging a person in civil contempt for disobeying an injunction against the unauthorized practice of law, the Court of Appeals could order the person to pay attorney fees of members of Committee on Unauthorized Practice of Law (CUPL); no conflict of interest or appearance thereof was sufficient in members' instituting and litigating civil contempt proceedings to prohibit award of attorney fees. *In re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Injunction ⇨ 1800

Evidence was sufficient to support attorney's conviction for criminal contempt, on charge that he practiced law during period of suspension, where attorney admitted having had actual notice of suspension, and thereafter appeared before judge, and made filings in connection with probate matter, which took him beyond 30-day grace period attorney thought he had to wind up his affairs before suspension order took effect. *In re Richardson*, 2000, 759 A.2d 649. Contempt ⇨ 60(3)

Person who willfully disobeys a court order may be adjudicated in contempt. *In re Richardson*, 2000, 759 A.2d 649. Contempt ⇨ 20

Appellate court has the power to enforce its orders with contempt. *In re Richardson*, 2000, 759 A.2d 649. Contempt ⇨ 34

§ 11-743. Rules of court.

Notes of Decisions

1. In general

When a local rule and a federal rule are identical, the Court of Appeals may look to federal court decisions in interpreting the federal rule as persuasive authority in interpreting the local rule. *Williams v. U.S.*, 2005, 878 A.2d 477. Courts ⇨ 97(1)

Single judge of appellate court was empowered to act in adjudicating and sentencing suspended

attorney for violating court's interim suspension order, though attorney claimed that judge lacked jurisdiction because federal constitution required three-judge division of court to hear criminal contempt proceeding, given authority conferred by contempt powers statute to single judge of appellate court to punish for disobedience of an order. *In re Richardson*, 2000, 759 A.2d 649. Contempt ⇨ 36

Chapter 9

Superior Court of the District of Columbia.

Subchapter I. Continuation and Organization.

Section

Section

- 11-901. Continuation of courts; court of record; seal.
- 11-902. Organization of the court.
- 11-903. Composition.
- 11-906. Administration by chief judge; discharge of duties.
- 11-908. Designation and assignment of judges.
- 11-908A. Special rules regarding assignment and service of judges of Family Court.
- 11-911. Emergency authority to conduct proceedings outside District of Columbia

Subchapter II. Jurisdiction.

- 11-921. Civil jurisdiction.
- 11-923. Criminal jurisdiction; commitment.
- 11-925. Rules regarding certain pending child custody cases.

Subchapter III. Miscellaneous Provisions.

- 11-943. Process.
- 11-944. Contempt power.
- 11-946. Rules of court.

SUBCHAPTER I. CONTINUATION AND ORGANIZATION.

§ 11-901. Continuation of courts; court of record; seal.

Notes of Decisions

In general 1

equivalent of a written and signed agreement. *Elwell v. Elwell*, 2008, 947 A.2d 1136. Federal Courts ⇨ 1052.1

1. In general

Because the Superior Court is a court of record, what was stated for the record is the operative

§ 11-902. Organization of the court.

(a) *In general.* — The Superior Court shall consist of the following:

- (1) The Civil Division.
- (2) The Criminal Division.
- (3) The Family Court.
- (4) The Probate Division.
- (5) The Tax Division.

(b) *Branches.* — The divisions of the Superior Court may be divided into such branches as the Superior Court may by rule prescribe.

(c) *Designation of presiding judge of family court.* — The chief judge of the Superior Court shall designate one of the judges assigned to the Family Court of the Superior Court to serve as the presiding judge of the Family Court of the Superior Court.

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§ 11-906

Note 1

(d) *Jurisdiction described.* — The Family Court shall have original jurisdiction over the actions, applications, determinations, adjudications, and proceedings described in section 11-1101. Actions, applications, determinations, adjudications, and proceedings being assigned to cross-jurisdictional units established by the Superior Court, including the Domestic Violence Unit, on the date of enactment of this section [January 8, 2002], may continue to be so assigned after the date of enactment of this section [January 8, 2002].

(July 29, 1970, 84 Stat. 482, Pub. L. 91-358, title I, § 111; Jan. 8, 2002, 115 Stat. 2100, Pub. L. 107-114, § 2(a).)

Historical and Statutory Notes

Prior Codifications

1981 Ed., § 11-902.

1973 Ed., § 11-902.

Effect of Amendments

Pub. L. 107-114 rewrote the section which had read:

“The Superior Court shall consist of the following divisions: Civil Division, Criminal Division, Family Division, Probate Division, and Tax Division. The divisions of the Superior Court may be divided into such branches as the Superior Court may by rule prescribe.”

§ 11-903. Composition.

The Superior Court of the District of Columbia shall consist of a chief judge and 61 associate judges.

(July 29, 1970, 84 Stat. 482, Pub. L. 91-358, title I, § 111; Mar. 19, 1984, 98 Stat. 65, Pub. L. 98-235, § 2; Nov. 21, 1989, 103 Stat. 1283, Pub. L. 101-168, § 138; Dec. 13, 1989, 103 Stat. 1967, Pub. L. 101-232, § 1; Apr. 18, 2008, 122 Stat. 696, Pub. L. 110-201, § 1.)

Historical and Statutory Notes

Effect of Amendments

Pub. Law 110-201 substituted “61” for “fifty-eight”.

§ 11-906. Administration by chief judge; discharge of duties.

(a) The chief judge shall administer and superintend the business of the Superior Court, as provided in Chapter 17 of this title. The chief judge shall attend to the discharge of the duties pertaining to the office of chief judge and perform such additional judicial work as the chief judge is able to perform.

(b) The chief judge shall, insofar as is consistent with this title, arrange and divide the business of the Superior Court and fix the time of sessions of the Family Court and the various divisions and branches of the Superior Court.

(July 29, 1970, 84 Stat. 483, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(10), (11), 108 Stat. 713; Jan. 8, 2002, 115 Stat. 2100, Pub. L. 107-114, § 2(b).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 107-114, in subsec. (b), inserted “the Family Court and” before “the various divisions”.

Notes of Decisions

In general 1

1. In general

Chief Judge of the Superior Court had authority under the Court Reorganization Act to create a special unit of the court to exclusively hear domestic violence cases. *Robinson v. U.S.*, 2001, 769 A.2d 747. Courts ⇐ 53

Even assuming that the Chief Judge of the Superior Court did not have authority to create a

special unit to exclusively hear domestic violence cases, the trial court still had jurisdiction over defendant's prosecution for simple assault, as the alleged defect was not jurisdictional. *Robinson v. U.S.*, 2001, 769 A.2d 747. Criminal Law ⇐ 100(2)

Creation of Domestic Violence Unit of the Superior Court was not invalid due to fact that Chief Judge did not place the unit within any particular division of the Superior Court. *Robinson v. U.S.*, 2001, 769 A.2d 747. Courts ⇐ 53

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Note 1

Domestic Violence Unit of the Superior Court did not lack jurisdiction to prosecute defendant for simple assault, even though defendant contended that assignment of certain divorce, custody, paternity, and child support cases to that unit was explicitly proscribed by the Court Reorganization Act, in that such cases were within the exclusive

jurisdiction of the Family Division; whether or not the Chief Judge lacked authority to assign such cases to the Domestic Violence Unit was irrelevant to defendant's case, as Chief Judge had authority to assign criminal misdemeanor cases to that unit. *Robinson v. U.S.*, 2001, 769 A.2d 747. Criminal Law ¶ 100(2)

§ 11-908. Designation and assignment of judges.

(a) Subject to subsection 11-908A, the chief judge may designate the number of judges to serve in any division and branch of the Superior Court and may assign and reassign any judge to sit in any division or branch. When making assignments to the Family Division and Tax Division, the chief judge shall consider the qualifications and interest of the judges. Each associate judge shall attend and serve in the division and branch to which assigned.

(b) When the business of the Superior Court requires, the chief judge may certify to the chief judge of the District of Columbia Court of Appeals the need for temporary assignment of an additional judge or judges as provided in section 11-707.

(c) Upon presentation of a certificate of necessity by the chief judge of the Superior Court, the chief judge of the United States Court of Appeals for the District of Columbia Circuit may designate and assign temporarily a judge or judges as provided in subsection (c) of section 292 of title 28, United States Code.

(July 29, 1970, 84 Stat. 483, Pub. L. 91-358, Title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(14), 108 Stat. 713; Jan. 8, 2002, 115 Stat. 2107, Pub. L. 107-114, § 3(e).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 107-114, in subsec. (a), substituted "Subject to section 11-908A, the chief judge" for "The chief judge".

§ 11-908A. Special rules regarding assignment and service of judges of Family Court.

(a) *Number of Judges.* —

(1) *In general.* — The number of judges serving on the Family Court of the Superior Court shall be not more than 15.

(2) *Emergency Reassignment.* — If the chief judge determines that, in order to carry out the intent and purposes of the District of Columbia Family Court Act of 2001, an emergency exists such that the number of judges needed on the Family Court of the Superior Court at any time is more than 15 —

(A) the chief judge may temporarily reassign judges from other divisions of the Superior Court to serve on the Family Court who meet the requirements of paragraphs (1) and (3) of subsection (b) or senior judges who meet the requirements of those paragraphs, except such reassigned judges shall not be subject to the term of service requirements set forth in subsection (c); and

(B) the chief judge shall, within 30 days of emergency temporary reassignment pursuant to subparagraph (A), submit a report to the President and Congress describing —

(i) the nature of the emergency;

(ii) how the emergency was addressed, including which judges were reassigned; and

(iii) whether and why an increase in the number of Family Court judges authorized in subsection (a)(1) may be necessary to serve the needs of families and children in the District of Columbia.

(3) *Composition.* — The total number of judges on the Superior Court may exceed the limit on such judges specified in section 11-903 to the extent necessary to maintain the requirements of this subsection if —

(A) the number of judges serving on the Family Court is less than 15; and

(B) the Chief Judge of the Superior Court —

(i) is unable to secure a volunteer judge who is sitting on the Superior Court outside of the Family Court for reassignment to the Family Court;

(ii) obtains approval of the Joint Committee on Judicial Administration; and

(iii) reports to Congress regarding the circumstances that gave rise to the necessity to exceed the cap.

(b) *Qualifications.* — The chief judge may not assign an individual to serve on the Family Court of the Superior Court or handle a Family Court case unless —

(1) the individual has training or expertise in family law;

(2) the individual certifies to the chief judge that the individual intends to serve the full term of service, except that this paragraph shall not apply with respect to individuals serving as senior judges under section 11-1504, individuals serving as temporary judges under section 11-908, and any other judge serving in another division of the Superior Court who is reassigned on an emergency temporary basis pursuant to subsection (a)(2);

(3) the individual certifies to the chief judge that the individual will participate in the ongoing training programs carried out for judges of the Family Court under section 11-1104(c); and

(4) the individual meets the requirements of section 433 of the District of Columbia Home Rule Act [D.C. Official Code § 1-204.33].

(c) *Term of Service.* —

(1) *In general.* — Except as provided in paragraph (2), an individual assigned to serve as a judge of the Family Court of the Superior Court shall serve for a term of 5 years.

(2) *Special rule for judges serving on superior court on the date of enactment of the District of Columbia Family Court Act of 2001.* —

(A) *In general.* — An individual assigned to serve as a judge of the Family Court of the Superior Court who is serving as a judge of the Superior Court on the date of the enactment of the District of Columbia Family Court Act of 2001 shall serve for a term of not fewer than 3 years.

(B) *Reduction of period for judges serving in family division.* — In the case of a judge of the Superior Court who is serving as a judge in the Family Division of the Court on the date of the enactment of the District of Columbia Family Court Act of 2001 [January 8, 2002], the 3-year term applicable under subparagraph (A) shall be reduced by the length of any period of consecutive service as a judge in such Division immediately preceding the date of the enactment of such Act [January 8, 2002].

(3) *Assignment for additional service.* — After the term of service of a judge of the Family Court (as described in paragraph (1)) expires, at the judge's request and with the approval of the chief judge, the judge may be assigned for additional service on the Family Court for a period of such duration (consistent with section 431(c) of the District of Columbia Home Rule Act [D.C. Official Code, § 1-204.31(c)]) as the chief judge may provide.

(4) *Permitting service on family court for entire term.* — At the request of the judge and with the approval of the chief judge, a judge may serve as a judge of the Family Court for the judge's entire term of service as a judge of the Superior Court under section 431(c) of the District of Columbia Home Rule Act [D.C. Official Code, § 1-204.31(c)].

(d) *Reassignment to other divisions.* — The chief judge may reassign a judge of the Family Court to any division of the Superior Court if the chief judge determines that in the interest of justice the judge is unable to continue serving in the Family Court.

(Jan. 8, 2002, 115 Stat. 2101, Pub. L. 107-114, § 3(a); Aug. 2, 2002, 116 Stat. 847, Pub. L. 107-206, § 406.)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 107-206, in subsec. (b)(4), substituted "section 433 of the District of Columbia Home Rule Act" for "section 11-1501(b)".

Miscellaneous Notes

Section 2(b) to (d) of Pub. L. 107-114 provides:

(b) "PLAN FOR FAMILY COURT TRANSITION.—

(1) "IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Jan. 8, 2002], the chief judge of the Superior Court of the District of Columbia shall prepare and submit to

the President and Congress a transition plan for the Family Court of the Superior Court, and shall include in the plan the following:

(A) "The chief judge's determination of the role and function of the presiding judge of the Family Court.

(B) "The chief judge's determination of the number of judges needed to serve on the Family Court.

(C) "The chief judge's determination of the number of magistrate judges of the Family Court needed for appointment under section 11-1732, District of Columbia Code.

(D) "The chief judge's determination of the appropriate functions of such magistrate judges, together with the compensation of and other personnel matters pertaining to such magistrate judges.

(E) "A plan for case flow, case management, and staffing needs (including the needs for both judicial and nonjudicial personnel) for the Family Court, including a description of how the Superior Court will handle the one family, one judge requirement pursuant to section 11-1104(a) for all cases and proceedings assigned to the Family Court.

(F) "A plan for space, equipment, and other physical plant needs and requirements during the transition, as determined in consultation with the Administrator of General Services.

(G) "An analysis of the number of magistrate judges needed under the expedited appointment procedures established under section 6(d) in reducing the number of pending actions and proceedings within the jurisdiction of the Family Court (as described in section 11-902(d), District of Columbia, as amended by subsection (a)).

(H) "Consistent with the requirements of paragraph (2), a proposal for the disposition or transfer to the Family Court of child abuse and neglect actions pending as of the date of enactment of this Act (which were initiated in the Family Division but remain pending before judges serving in other Divisions of the Superior Court as of such date) in a manner consistent with applicable Federal and District of Columbia law and best practices, including best practices developed by the American Bar Association and the National Council of Juvenile and Family Court Judges.

(I) "An estimate of the number of cases for which the deadline for disposition or transfer to the Family Court, specified in paragraph (2)(B), cannot be met and the reasons why such deadline cannot be met.

(2) "IMPLEMENTATION OF THE PLAN FOR TRANSFER OR DISPOSITION OF ACTIONS AND PROCEEDINGS TO FAMILY COURT.—

(A) "IN GENERAL.—Except as provided in subparagraph (C), the chief judge of the Superior Court and the presiding judge of the Family Court shall take such steps as may be required as provided in the proposal for disposition of actions and proceedings under paragraph (1)(H) to ensure that

each child abuse and neglect action of the Superior Court (as described in section 11-902(d), District of Columbia Code, as amended by subsection (a)) is transferred to the Family Court or otherwise disposed of as provided in subparagraph (B).

(B) "DEADLINE.—

(i) "IN GENERAL.—Notwithstanding any other provision of this Act or any amendment made by this Act and except as provided in subparagraph (C), no child abuse or neglect action shall remain pending with a judge not serving on the Family Court upon the expiration of 18 months after the filing of the transition plan required under paragraph (1).

(ii) "RULE OF CONSTRUCTION.—The chief judge of the Superior Court should make every effort to provide for the earliest practicable disposition of actions. Nothing in this subparagraph shall preclude the immediate transfer of cases to the Family Court, particularly cases which have been filed with the court for less than 6 months prior to the date of enactment of this Act [Jan. 8, 2002].

(C) "RETAINED CASES.—Child abuse and neglect cases that were initiated in the Family Division but remain pending before judges, including senior judges as defined in section 11-1504, District of Columbia Code, in other Divisions of the Superior Court as of the date of enactment of this Act may remain before judges, including senior judges, in such other Divisions when—

(i) "the case remains at all times in full compliance with Public Law 105-89, if applicable; and

(ii) "the chief judge determines, in consultation with the presiding judge of the Family Court, based on the record in the case and any unique expertise, training, or knowledge of the case that the judge might have, that permitting the judge to retain the case would lead to permanent placement of the child more quickly than reassignment to a judge in the Family Court.

(D) "PRIORITY FOR CERTAIN ACTIONS AND PROCEEDINGS.—The chief judge of the Superior Court, in consultation with the presiding judge of the Family Court, shall give priority consideration to the disposition or transfer of the following actions and proceedings:

(i) "The action or proceeding involves an allegation of abuse or neglect.

(ii) "The action or proceeding was initiated in the family division prior to the 2-year period which ends on the date of enactment of this Act [Jan. 8, 2002].

(iii) "The judge to whom the action or proceeding is assigned as of the date of enactment of this Act [Jan. 8, 2002] is not assigned to the Family Division.

(E) "PROGRESS REPORTS.—The chief judge of the Superior Court shall submit reports to the President, to the Committee on Appropriations of each House, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives at

6-month intervals for a period of 2 years after the date of submission of the transition plan required under paragraph (1) on the progress made towards disposing of actions or proceedings described in subparagraph (B).

(F) “RULE OF CONSTRUCTION.—Nothing in this subsection shall preclude the chief judge, in consultation with the presiding judge of the Family Court, from transferring actions or proceedings pending before judges outside the Family Court at the enactment of this Act which do not involve allegations of abuse and neglect but which would otherwise fall under the jurisdiction of the Family Court to judges in the Family Court prior to the deadline as defined in subparagraph 2(B), particularly if such transfer would result in more efficient resolution of such actions or proceedings.

(3) “EFFECTIVE DATE OF IMPLEMENTATION OF PLAN.—The chief judge of the Superior Court may not take any action to implement the transition plan under this subsection until the expiration of the 30-day period which begins on the date the chief judge submits the plan to the President and Congress under paragraph (1).

(c) “TRANSITION TO REQUIRED NUMBER OF JUDGES.—

(1) “ANALYSIS BY CHIEF JUDGE OF SUPERIOR COURT.—The chief judge of the Superior Court of the District of Columbia shall include in the transition plan prepared under subsection (b)—

(A) “the chief judge’s determination of the number of individuals serving as judges of the Superior Court who—

(i) “meet the qualifications for judges of the Family Court of the Superior Court under section 11-908A, District of Columbia Code (as added by subsection (a)); and

(ii) “are willing and able to serve on the Family Court; and

(B) “if the chief judge determines that the number of individuals described in subparagraph (A) is less than 15, a request that the Judicial Nomination Commission recruit and the President nominate (in accordance with section 433 of the District of Columbia Home Rule Act) such additional number of individuals to serve on the Superior Court who meet the qualifications for judges of the Family Court under section 11-908A, District of Columbia Code, as may be required to enable the chief judge to make the required number of assignments.

(2) “ROLE OF DISTRICT OF COLUMBIA JUDICIAL NOMINATION COMMISSION.—For purposes of section 434(d)(1) of the District of Columbia Home Rule Act, the submission of a request from the chief judge of the Superior Court of the District of Columbia under paragraph (1)(B) shall be deemed to create a number of vacancies in the position of judge of the Superior Court equal to the number of additional appointments so re-

quested by the chief judge, except that the deadline for the submission by the District of Columbia Judicial Nomination Commission of nominees to fill such vacancies shall be 90 days after the creation of such vacancies. In carrying out this paragraph, the District of Columbia Judicial Nomination Commission shall recruit individuals for possible nomination and appointment to the Superior Court who meet the qualifications for judges of the Family Court of the Superior Court.

(d) “REPORT BY COMPTROLLER GENERAL.—

(1) “IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall prepare and submit to Congress and the chief judge of the Superior Court of the District of Columbia a report on the implementation of this Act (including the implementation of the transition plan under subsection (b)), and shall include in the report the following:

(A) “An analysis of the procedures used to make the initial appointments of judges of the Family Court under this Act and the amendments made by this Act, including an analysis of the time required to make such appointments and the effect of the qualification requirements for judges of the Court (including requirements relating to the length of service on the Court) on the time required to make such appointments.

(B) “An analysis of the impact of magistrate judges for the Family Court (including the expedited initial appointment of magistrate judges for the Court under section 6(d)) on the workload of judges and other personnel of the Court.

(C) “An analysis of the number of judges needed for the Family Court, including an analysis of how the number may be affected by the qualification requirements for judges, the availability of magistrate judges, and other provisions of this Act or the amendments made by this Act.

(D) “An analysis of the timeliness of the resolution and disposition of pending actions and proceedings required under the transition plan (as described in paragraphs (1)(I) and (2) of subsection (b)), including an analysis of the effect of the availability of magistrate judges on the time required to resolve and dispose of such actions and proceedings.

(2) “SUBMISSION TO CHIEF JUDGE OF SUPERIOR COURT.—Prior to submitting the report under paragraph (1) to Congress, the Comptroller General shall provide a preliminary version of the report to the chief judge of the Superior Court and shall take any comments and recommendations of the chief judge into consideration in preparing the final version of the report.”

References in Text

The District of Columbia Family Court Act of 2001, referred to in subsecs. (a)(2), (c)(2), (c)(2)(A), and (c)(2)(B), is Pub. L. 107-114, 115 Stat. 2100, Jan. 8, 2002.

§ 11-911

ORGANIZATION AND JURISDICTION OF THE COURTS

§ 11-911. Emergency authority to conduct proceedings outside District of Columbia

(a) *In general.* — The Superior Court may hold special sessions at any place within the United States outside the District of Columbia as the nature of the business may require and upon such notice as the Superior Court orders, upon a finding by either the chief judge of the Superior Court (or, if the chief judge is absent or disabled, the judge designated under section 11-907(a)) or the Joint Committee on Judicial Administration in the District of Columbia that, because of emergency conditions, no location within the District of Columbia is reasonably available where such special sessions could be held.

(b) *Business transacted.* — The Superior Court may transact any business at a special session outside the District of Columbia authorized pursuant to this section which it has the authority to transact at a regular session, except that a criminal trial may not be conducted at such a special session without the consent of the defendant.

(c) *Summoning of jurors.* — Notwithstanding any other provision of law, in any case in which special sessions are conducted pursuant to this section, the Superior Court may summon jurors —

(1) in civil proceedings, from any part of the District of Columbia or, if jurors are not readily available from the District of Columbia, the jurisdiction in which it is holding the special session; and

(2) in criminal trials, from any part of the District of Columbia or, if jurors are not readily available from the District of Columbia and if the defendant so consents, the jurisdiction in which it is holding the special session.

(d) *Notice requirements.* — If the Superior Court issues an order exercising its authority under subsection (a), the Court —

(1) through the Joint Committee on Judicial Administration in the District of Columbia, shall send notice of such order, including the reasons for the issuance of such order, to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives; and

(2) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.

(Oct. 16, 2006, 120 Stat. 2025, Pub. L. 109-356, § 114(b)(1).)

SUBCHAPTER II. JURISDICTION.

§ 11-921. Civil jurisdiction.

Notes of Decisions

Condemnation 11.7

Garnishment 10.5

Tax proceedings 11.5

1. In general

Case remand does not permit the trial court to act as if the appeal had not taken place; rather, a case remand, unlike a record remand, allows the trial court to amend the ruling that was reviewed and found wanting on appeal, and to conduct the balance of the proceedings to final judgment. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1067

Scope of the trial court's authority following case remand is necessarily limited by appellate jurisdiction and instructions. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1067

Generally, the trial court has considerable discretion in determining how it shall proceed in a

particular case. *In re A.W.K.*, 2001, 778 A.2d 314. Federal Courts ⇨ 1052.1

2. Jurisdiction, generally

To avoid dismissal, subject matter jurisdiction must have existed on date that lawsuit was filed. *Arnold v. District of Columbia*, 2002, 211 F.Supp.2d 144. Federal Courts ⇨ 29.1

The Superior Court has jurisdiction over claims that sound in equity. *Prince Const. Co., Inc. v. District of Columbia Contract Appeals Bd.*, 2006, 892 A.2d 380. Federal Courts ⇨ 1051

A motion to dismiss based on lack of subject matter jurisdiction may be either a facial attack on the allegation of jurisdiction in the complaint, or a factual attack on the basis of the court's jurisdiction. *Heard v. Johnson*, 2002, 810 A.2d 871. Federal Courts ⇨ 1052.1

A facial attack on court's subject matter jurisdiction requires an appellate court to determine juris-

diction by looking only at the face of the complaint and taking the allegations in the complaint as true, while a factual attack may occur at any stage of the proceedings and plaintiff bears the burden of proof that jurisdiction does in fact exist. *Heard v. Johnson*, 2002, 810 A.2d 871. Federal Courts ⇨ 1051; Federal Courts ⇨ 1066

On a motion to dismiss for lack of subject matter jurisdiction, the crucial question is whether a court can conclude from reading the complaint that the claim falls within the trial court's constitutionally circumscribed secular jurisdiction. *Heard v. Johnson*, 2002, 810 A.2d 871. Religious Societies ⇨ 14

Pastor, who brought defamation against trustees of church for whom he was employed, failed to plead specific and unequivocal facts necessary to establish court's jurisdiction to hear such claim, and thus trial court erred in denying trustees' motion to dismiss based on immunity under the Free Exercise Clause of First Amendment; although pastor claimed that manual that documented the grievances against pastor, which contained the reasons why pastor was dismissed and attempts congregation made to remove pastor, was inappropriately published, pastor never denoted to whom manual was published, never alleged publication to anyone other than members of church to whom pastor was employed, and pastor made no claim that the alleged defamation involved unusual or egregious circumstances. *Heard v. Johnson*, 2002, 810 A.2d 871. Libel And Slander ⇨ 36; Religious Societies ⇨ 14

Wife of foreign ambassador was member of the family of member of diplomatic mission for purposes of federal statute providing that federal district courts have original jurisdiction, exclusive of courts of the states, of all civil actions against members of a mission or members of their families, and as such, this federal statute divested Superior Court of the District of Columbia of subject matter jurisdiction over motorist's action against ambassador's wife for damages sustained in automobile collision, and wife's failure to plead lack of jurisdiction in the first instance did not invest Superior Court with jurisdiction. *Slater v. Biehl*, 2002, 793 A.2d 1268. Ambassadors And Consuls ⇨ 3; Federal Courts ⇨ 1141

Where substantial question exists as to court's subject matter jurisdiction, it is court's obligation to raise it, sua sponte, even though no party has asked court to consider it. *In re D.M.*, 2001, 771 A.2d 360. Federal Courts ⇨ 30

Without jurisdiction, court cannot proceed at all in any cause. *In re D.M.*, 2001, 771 A.2d 360. Federal Courts ⇨ 3.1

Jurisdiction is power to declare law, and when it ceases to exist, only function remaining to court is that of announcing the fact and dismissing the cause. *In re D.M.*, 2001, 771 A.2d 360. Federal Courts ⇨ 3.1; Federal Courts ⇨ 30

Statute providing that Superior Court may not vacate a judgment foreclosing right of redemption unless jurisdiction was lacking or there was fraud in foreclosure, which limits or otherwise overrides

Superior Court's ability to vacate judgments under rule of civil procedure setting forth six grounds for relief from a final judgment, restricts Superior Court's equity jurisdiction and, thus, violates provision of Home Rule Act that prohibits District of Columbia Council from enacting any law with respect to congressional provisions relating to jurisdiction of the District of Columbia courts. *Shoetan v. Link, et al.*, 137 WLR 2685 (Super. Ct. 2009).

3. Court of general jurisdiction

Threatened strike by employees of school district was not an unfair labor practice such that Public Employee Relations Board was vested with primary jurisdiction over attempt by superintendent of school district and District of Columbia to prohibit the strike, and Superior Court had jurisdiction to issue a preliminary injunction; Superior Court was a court of general jurisdiction with the power to adjudicate any civil action at law or in equity involving local law, and by enacting prohibition against strikes in Comprehensive Merit Personnel Act (CMPA) that was in addition to provision that banned strikes as unfair labor practices Council of the District of Columbia manifested its intent to enable District government to go directly to Superior Court to enjoin strikes by public employees. *Feaster v. Vance*, 2003, 832 A.2d 1277, on remand 2003 WL 25280106. Labor And Employment ⇨ 1677(6)

As a court of general jurisdiction, the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia unless jurisdiction is vested exclusively in a federal court. *Slater v. Biehl*, 2002, 793 A.2d 1268. Federal Courts ⇨ 1051

5. Divisions of court—In general

Prejudicial dismissal on the ground that the Civil Division, not the Probate Division, was the proper forum was erroneous; the dismissal would have been proper only if no division of the Superior Court possessed jurisdiction. *Brandenburger & Davis, Inc. v. Estate of Lewis*, 2001, 771 A.2d 984. Courts ⇨ 50; Federal Courts ⇨ 1052.1

No jurisdictional bar exists to one division of the Superior Court entertaining an action more appropriately considered in another division, so long as doing so does not violate the statute or rules of the court and the claim has a rational nexus to a subject matter within the responsibility of that division. *Brandenburger & Davis, Inc. v. Estate of Lewis*, 2001, 771 A.2d 984. Courts ⇨ 50; Federal Courts ⇨ 1051

6. — Family division, divisions of court

Trial court had subject matter to issue permanent child support order, even though parties no longer resided in District of Columbia, where mother and child resided in District at time mother filed action and issues to be determined at time of filing had not yet been resolved. *Brown v. Hines-Williams*, 2010, 2 A.3d 1077. Child Support ⇨ 507

8. — Probate division, divisions of court

The Probate Division of the Superior Court of the District of Columbia has subject matter juris-

§ 11-921

Note 8

diction over the estate of any decedent who was domiciled in the District of Columbia at the time of death. In re Estate of Delaney, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1051

Probate Division of Superior Court of District of Columbia, under its general subject matter jurisdiction over estate of decedent who had been domiciled in District of Columbia at time of his death, also had more specific subject matter jurisdiction over dispute regarding ownership of funds from jointly-registered credit union account and cash management account maintained in Virginia. In re Estate of Delaney, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Executors And Administrators ⇨ 10; Executors And Administrators ⇨ 12

Probate Division of Superior Court has subject matter jurisdiction over estate of any decedent who was domiciled in District of Columbia at time of death. Dennis v. Edwards, 2003, 831 A.2d 1006. Federal Courts ⇨ 1051

Probate Division had jurisdiction over heir hunt-er corporation's action to enforce rights under assignments of heirs' interests in estate; the dispute over the validity of the assignments would determine disbursement of estate funds and was fundamentally a probate matter. Brandenburger & Davis, Inc. v. Estate of Lewis, 2001, 771 A.2d 984. Federal Courts ⇨ 1051

10.5. Garnishment

Pro se debtor was not entitled to default judgment against government employer, in action alleging violation of his civil rights and District of Columbia law, in connection with garnishment of his wages to satisfy his student loan debt, although employer did not file answer to complaint on time, where employer submitted a motion for extension of time to respond to complaint one day after response deadline and before debtor filed motion for default judgment, employer presented good faith explanation for their delay, debtor sustained no prejudice, and employer asserted potentially meritorious defense in action. Savage v. Scales, 2004, 310 F.Supp.2d 122. Federal Civil Procedure ⇨ 2416

Higher Education Act (HEA) garnishment provision, authorizing administrative garnishment of wages for collection of federally guaranteed student loan debts, notwithstanding any provision of state law, expressly preempted District of Colum-

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bia wage garnishment statute, so that state guar-anty agency was not required to comply with District of Columbia statute prior to garnishing student loan debtor's wages, where notice of garnishment order referenced Act provision. Savage v. Scales, 2004, 310 F.Supp.2d 122. District Of Columbia ⇨ 4; Garnishment ⇨ 2

11.5. Tax proceedings

District of Columbia courts have exclusive jurisdiction over challenges to assessments and claims for refunds of District of Columbia taxes. Jenkins v. Washington Convention Center, C.A.D.C.2001, 236 F.3d 6, 344 U.S.App.D.C. 315. Federal Courts ⇨ 1138

Federal district court was precluded from exercising jurisdiction over action brought by members of unincorporated businesses (UB) seeking declaratory judgment that imposition of District of Columbia's UB franchise tax on them, as non-resident members of a UB, was unlawful under the federal Constitution and District of Columbia's Home Rule Act; District of Columbia's jurisdiction granting code provisions vested its Superior Court with exclusive jurisdiction regarding review of the validity or amount of District of Columbia tax assessments, including federal and constitutional issues, and, while business members argued they were challenging the imposition of a tax, rather than the assessment, the common legal definition of "assessment" included imposition of a tax, and the members had to be challenging their actual tax liability as assessed in order to have standing. Fernebok v. District of Columbia, 2008, 534 F.Supp.2d 25. Federal Courts ⇨ 1133; Federal Courts ⇨ 1138

11.7. Condemnation

Property owner's allegation that city council authorized an illegal exercise of eminent domain under false pretext did not deprive trial court of subject-matter jurisdiction over condemnation proceeding. Franco v. District of Columbia, 2012, 39 A.3d 890. Eminent Domain ⇨ 66

12. Administrative review

Superior Court, acting in appellate capacity in reviewing decision of Office of Employment Appeals, had jurisdiction to decide whether to recall its mandate and whether to order that administrative record be reopened. District of Columbia v. Stokes, 2001, 785 A.2d 666. Federal Courts ⇨ 1051

§ 11-923. Criminal jurisdiction; commitment.

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1. Validity

United States Parole Commission (USPC) did not violate separation of powers doctrine by issuing, pursuant to District of Columbia's supervised

release statute, warrants for parolee's arrest or by finding probable cause to believe parolee committed offense as charged, since USPC exercised no judicial function and had no authority to impose prison sentence upon conviction of crime. Smallwood v. U.S. Parole Com'n, 2011, 777 F.Supp.2d 148. Constitutional Law ⇨ 2623; Pardon and Parole ⇨ 77.1; Pardon and Parole ⇨ 81

United States Parole Commission (USPC) had full authority to grant, deny, or revoke a District of Columbia offender's parole and return offender to custody, thereby precluding habeas relief; USPC did not impinge on judiciary's authority, as parole revocation was separate administrative proceeding at which it determined whether offender would serve sentence in or out of prison, District of Columbia prisoners did not have constitutionally protected liberty interest in being released to parole and therefore had no due process protection with respect to parole determinations or procedures, and there was no double jeopardy protection against revocation of probation and imposition of imprisonment. *Brown v. U.S. Parole Com'n*, 2010, 713 F.Supp.2d 11. Constitutional Law ⇨ 2623; Constitutional Law ⇨ 4838; Double Jeopardy ⇨ 31; Habeas Corpus ⇨ 516.1; Habeas Corpus ⇨ 517; Pardon And Parole ⇨ 46; Pardon And Parole ⇨ 69

2. In general

Petitioner failed to allege facts sufficient to support assertion that Moorish-Americans were disadvantaged by United States Parole Commission's (USPC) enforcement of District of Columbia's supervised release statute, as required to state equal protection claim against USPC. *Smallwood v. U.S. Parole Com'n*, 2011, 777 F.Supp.2d 148. Constitutional Law ⇨ 3304; Pardon And Parole ⇨ 45.1

Lack of subject matter jurisdiction is not waivable and may be raised at any time. *Long v. U.S.*, 2007, 940 A.2d 87. Criminal Law ⇨ 105

4. Geographical limits of jurisdiction

Defendant's use of Maryland victim's motor vehicle occurred in District of Columbia, within meaning of statutes governing theft and unauthorized use of motor vehicle, as required for superior court to have subject matter jurisdiction to prosecute offense; although defendant took possession of victim's car in Maryland, police officers stopped and arrested defendant while he was using victim's car without her permission within District of Columbia. *Dobyns v. U.S.*, 2011, 30 A.3d 155. Criminal Law ⇨ 97(5)

Prosecution for obstruction of justice, arising from murder in Maryland of witness to triple murder in District of Columbia that was under investigation at time witness was murdered, did not violate rule of vicinage or jurisdictional statute, as proceeding that defendant sought to obstruct, i.e., investigation of triple murder, was pending in District of Columbia. *Crutchfield v. U.S.*, 2001, 779 A.2d 307. Criminal Law ⇨ 112(1)

6. Jurisdiction of various criminal charges

Superior Court had jurisdiction over prosecution of defendants for alleged violations of statute setting forth offense of unlawful parading and assembling on United States Supreme Court grounds;

statute provided that such violations could be prosecuted in Superior Court as well as in United States District Court, and statute governing jurisdiction of criminal cases provided that Superior Court had jurisdiction of any criminal case under any law applicable exclusively to the District of Columbia, and, by regulating only behavior on United States Supreme Court grounds, the law at issue was such a law. *Potts v. U.S.*, 2007, 919 A.2d 1127. Federal Courts ⇨ 1051

Trial court had territorial jurisdiction in first-degree sexual abuse case, even though defendant argued that sexual activity did not occur until he and victim were outside District of Columbia; use-of-force element of offense occurred in District when victim was ordered to get into prone position in van upon exiting apartment where other sexual activity had taken place and where she learned that defendant's companion in crime had gun. *Dyson v. U.S.*, 2004, 848 A.2d 603, certiorari denied 125 S.Ct. 2962, 545 U.S. 1141, 162 L.Ed.2d 892. Criminal Law ⇨ 97(5)

In determining whether a trial court has territorial jurisdiction, it is insufficient to show that part of the crime in question took place outside the District of Columbia's boundaries since a crime may be the result of a series of acts and the direct consequences may be made to occur at various times and in different localities. *Dyson v. U.S.*, 2004, 848 A.2d 603, certiorari denied 125 S.Ct. 2962, 545 U.S. 1141, 162 L.Ed.2d 892. Criminal Law ⇨ 97(5)

A prosecution for obstruction of justice may be brought in the district where the judicial proceeding that the accused sought to obstruct is pending, even if the obstructing acts took place in a different district. *Crutchfield v. U.S.*, 2001, 779 A.2d 307. Criminal Law ⇨ 97(5)

7. Burden of proof

Subject matter jurisdiction in a criminal case must always be proven beyond a reasonable doubt, but it can be shown by indirect evidence and inferences reasonably drawn from that evidence. *Long v. U.S.*, 2007, 940 A.2d 87. Criminal Law ⇨ 564(2)

8. Presumptions

There is a presumption that an offense charged was committed within the jurisdiction of the court in which the charge is filed unless the evidence affirmatively shows otherwise. *Long v. U.S.*, 2007, 940 A.2d 87. Criminal Law ⇨ 104

9. Judicial notice

Trial court could appropriately take judicial notice that location of charged offense of assault was within the District of Columbia based on geographic locations mentioned in testimony of witnesses. *Long v. U.S.*, 2007, 940 A.2d 87. Criminal Law ⇨ 304(5)

§ 11-925. Rules regarding certain pending child custody cases.

Validity

This section has been held unconstitutional in the case of Foretich v. U.S., C.A.D.C. 2003, 351 F.3d 1198, 359 U.S.App.DC 54.

Historical and Statutory Notes

Miscellaneous Notes

Bill of Attainder:

This section was held unconstitutional in *Foretich v. U.S.*, 351 F. 3d 1198 (D.C. Cir. 2003).

Elizabeth Morgan Act: Legislation that prohibited noncustodial parent from obtaining visitation with daughter against her wishes, and in face of unproven allegations of sexual abuse, after she had turned thirteen, thereby effectively stigmatizing parent as child abuser and unfit parent, was enacted for punitive purpose and had to be held uncon-

stitutional as impermissible bill of attainder, where narrowness with which statute applied, only to this particular noncustodial parent and his daughter, belied any nonpunitive purpose to deal with alleged child sexual abuse generally, and where fact that Congress would not have enacted this legislation if parent had agreed to voluntarily give up his visitation rights, showed that it was Congress' purpose in enacting law to assume role of judicial tribunal and to impose its own determination of who was or was not fit parent.

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1. Validity

Legislation that prohibited noncustodial parent from obtaining visitation with daughter against her wishes, and in face of unproven allegations of sexual abuse, after she had turned thirteen, thereby effectively stigmatizing parent as child abuser and unfit parent, was enacted for punitive purpose and had to be held unconstitutional as impermissible bill of attainder, where narrowness with which statute applied, only to this particular noncustodial parent and his daughter, belied any nonpunitive purpose to deal with alleged child sexual abuse generally, and where fact that Congress would not have enacted this legislation if parent had agreed to voluntarily give up his visitation rights, showed that it was Congress' purpose in enacting law to assume role of judicial tribunal and to impose its own determination of who was or was not fit parent. *Foretich v. U.S.*, C.A.D.C.2003, 351 F.3d 1198, 359 U.S.App.D.C. 54. Child Custody ⇨ 4; Constitutional Law ⇨ 1100(1)

Legislation that prohibited noncustodial parent from obtaining visitation with daughter against her wishes, and in face of unproven allegations of sexual abuse, after she had turned thirteen, "applied with specificity," as required for legislation to be subject to attack as bill of attainder; though Congress stopped short of using noncustodial parent's name in text of statute, applicability of statute depended on such a narrow set of circumstances that noncustodial parent was easily identified as being the subject of legislation, and government conceded at oral argument that there was no genuine issue as to law's specificity. *Foretich v. U.S.*, C.A.D.C.2003, 351 F.3d 1198, 359 U.S.App.D.C. 54. Child Custody ⇨ 4; Constitutional Law ⇨ 1100(1)

2. Standing

Reputational injury that noncustodial parent sustained as result of legislation's interference with his court-ordered right to visitation with his daughter was not sufficient to give him Article III standing to challenge this legislation as bill of attainder or on other grounds, once daughter turned eighteen and father lost right to compel visitation with daughter even in absence of any such legislation. *Foretich v. U.S.*, C.A.D.C.2003, 351 F.3d 1198, 359 U.S.App.D.C. 54. Constitutional Law ⇨ 725

Although legislation that prohibited District of Columbia court from "impos[ing] sanctions" on custodial parent for interfering with visitation rights of other parent accused of sexually abusing child did prevent other parent from seeking fresh award of sanctions for custodial parent's acts in fleeing with child to New Zealand, any injury in this respect was too speculative to give noncustodial parent Article III standing to challenge constitutionality of legislation, where noncustodial parent could point to no efforts on his part to obtain any such award; mere prospect that noncustodial parent might one day wish to press claim for costs associated with other parent's flight to New Zealand was too remote to impose any "actual or imminent" injury in fact. *Foretich v. U.S.*, C.A.D.C.2003, 351 F.3d 1198, 359 U.S.App.D.C. 54. Constitutional Law ⇨ 704

Legislation that prohibited District of Columbia court from "impos[ing] sanctions" on custodial parent for interfering with visitation rights of other parent accused of sexually abusing child did not preclude other parent from seeking enforcement of sanctions which court, upon finding that allegations of sexual abuse were not sufficiently proven, had previously imposed, so that other parent could not demonstrate any cognizable injury in this respect, of kind sufficient to give him Article III standing to challenge constitutionality of legislation. *Foretich v. U.S.*, C.A.D.C.2003, 351 F.3d 1198, 359

U.S.App.D.C. 54. Child Custody ⇨ 850; Constitutional Law ⇨ 704

3. Moot questions

While noncustodial parent's challenge to constitutionality of District of Columbia legislation that interfered with his court-ordered right to visitation with his daughter, to extent that it was based upon reputational injury resulting from such interference, was rendered moot once daughter reached age of majority, separate reputational injury arising from existence of this legislation itself, which effectively branded parent as child abuser and unfit parent, was sufficient to confer Article III standing; judicial determination that Congress acted unlawfully in enacting this legislation would provide significant measure of redress for the harm that legislation had caused to parent's reputation. *Foretich v. U.S.*, C.A.D.C.2003, 351 F.3d

1198, 359 U.S.App.D.C. 54. Constitutional Law ⇨ 704; Constitutional Law ⇨ 977

Cause of action that noncustodial parent brought challenging, both as unlawful bill of attainder and on other grounds, legislation that prevented him from obtaining visitation with his daughter against her wishes, and in face of unproven allegations of sexual abuse, after she had turned thirteen, had become moot, insofar as injury of which parent complained was interference with visitation rights that he had previously enjoyed under judicial decree, after child had reached age of majority; once daughter reached age of majority, District of Columbia law precluded parent from obtaining or enforcing any visitation order, even in absence of challenged legislation. *Foretich v. U.S.*, C.A.D.C. 2003, 351 F.3d 1198, 359 U.S.App.D.C. 54. Federal Courts ⇨ 13

SUBCHAPTER III. MISCELLANEOUS PROVISIONS.

§ 11-943. Process.

Notes of Decisions

1. Service of process

Under District of Columbia law, plaintiffs' proof of service on limited liability company (LLC) was ineffective, and thus LLC was not required to join notice of removal, where affidavit of proof of service failed to provide any indication that person who accepted service was proper individual to accept service for LLC. *Kopff v. World Research Group, LLC*, 2003, 298 F.Supp.2d 50. Removal Of Cases ⇨ 82

Under District of Columbia law, plaintiffs' service of amended complaint by means of facsimile transmission was ineffective, and thus defendant was not required to join notice of removal, where defendant had not consented to electronic service, and there was no administrative order of Superior Court permitting such service. *Kopff v. World Research Group, LLC*, 2003, 298 F.Supp.2d 50. Removal Of Cases ⇨ 82

Default judgment was inappropriate in action brought by grandparent of developmentally disabled child against District of Columbia, alleging that child had been denied free appropriate public education, since default motion and service were procedurally defective; grandparent combined motions for entry of default and default judgment rather than first obtaining entry of default, and grandparent originally served attorney general of District of Columbia rather than mayor. *Peak v. District of Columbia*, 2006, 236 F.R.D. 13. Federal Civil Procedure ⇨ 2416

Injured plaintiff's failure to serve process on persons designated by mayor and corporation counsel as agents authorized to receive service of process warranted dismissal of suit against District of Columbia. *Eldridge v. District of Columbia*, 2004, 866 A.2d 786. District Of Columbia ⇨ 36

In determining whether plaintiff has shown good cause why action should not be dismissed for un-

timely service, a court considers reasons for plaintiff's failure to comply with the rule, prejudice, if any, to plaintiff, prejudice, if any, to defendant, and whether plaintiff has made some showing of reasonable diligence in attempting to comply with the rules. *Johnson v. Payless Shoe Source, Inc.*, 2004, 841 A.2d 1249. Federal Courts ⇨ 1052.1

Customer showed good cause that personal injury suit against shoe store owner should not have been dismissed for failure to timely file proof of service, requiring trial court to grant motion to reinstate, despite claim that owner did not timely receive notice of motion; customer's reason for failing to file timely proof of service was that anthrax contamination produced numerous systemic delays in delivery of mail to courthouse, denial of customer's motion would result in extreme prejudice by converting what ordinarily was a dismissal without prejudice into a dismissal with prejudice, corporation was not prejudiced as consequence of reinstatement, and customer demonstrated diligence in otherwise complying with rules of procedure. *Johnson v. Payless Shoe Source, Inc.*, 2004, 841 A.2d 1249. Federal Courts ⇨ 1052.1

Where defendant claimed to have first learned of action some time after service upon its agent duly authorized by appointment or by law, effective date of service of summons was date on which agent was served. *Johnson v. Payless Shoe Source, Inc.*, 2004, 841 A.2d 1249. Federal Courts ⇨ 1052.1

Just as actual notice of an action cannot cure ineffective service of process, neither may lack of actual notice forestall effective service of process. *Johnson v. Payless Shoe Source, Inc.*, 2004, 841 A.2d 1249. Federal Courts ⇨ 1052.1

Tenant was not entitled to relief from default judgment in favor of landlord in action for possession after selling the property; the tenant merely

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claimed to be out of town on date of hearing, had actual notice of the notice to vacate, received proper notice of the summons and complaint for possession through posting and mailing, and did not present an adequate defense, and the landlord and contract purchaser would suffer prejudice upon the setting aside of the default judgment. *Pelkey v. Endowment for Community Leadership*, 2004, 841 A.2d 757. Federal Courts ⇨ 1052.1

Tenant was not entitled to vacating of default in favor of landlord in action for possession; the tenant received the notice to vacate, did not file a verified answer, and failed to show good cause. *Pelkey v. Endowment for Community Leadership*, 2004, 841 A.2d 757. Federal Courts ⇨ 1052.1

Previous owner's bare denial of receipt of the complaint or any other documents related to the case against him to confirm a tax deed and quiet title in real property, other than the final default judgment, was not sufficient to overcome the presumption of truth attached to the statement in the process server's return that he personally served the summons and complaint. *Venison v. Robinson*, 2000, 756 A.2d 906. District Of Columbia ⇨ 33(32)

In order to overcome the presumption of truth attached to the statement in the process server's return, a movant seeking to set aside a default judgment on ground that he did not have notice of the proceedings is required to present strong and convincing evidence that he was not served. *Venison v. Robinson*, 2000, 756 A.2d 906. Federal Courts ⇨ 1052.1

Trial court was not required to conduct a hearing to determine the validity of the service of the summons and complaint on previous owner before entering default judgment, in action to confirm a tax deed and quiet title in real property, where previous owner merely denied receipt of the pro-

cess without contesting the substance of the server's affidavit that stated previous owner was personally served. *Venison v. Robinson*, 2000, 756 A.2d 906. District Of Columbia ⇨ 33(32)

Previous landowner's notice of appeal of entry of default judgment, in action to confirm a tax deed and quiet title in real property, divested the trial court of its jurisdiction in all matters related to the case, including jurisdiction over an evidentiary hearing on the validity of the service of process, which it agreed to hold when it granted previous landowner's motion to reconsider. *Venison v. Robinson*, 2000, 756 A.2d 906. District Of Columbia ⇨ 33(32)

Previous landowner's promptness in coming forward after a default judgment was entered against him, in action to confirm a tax deed and quiet title in real property, carried little or no weight, as factor considered on review of a denial of a motion to vacate a default judgment, where previous landowner presented no evidence, other than his unsupported claim that the judgment was the first document he received in the case, contesting the process server's affidavit that he was personally served, which allowed presumption that he received personal service. *Venison v. Robinson*, 2000, 756 A.2d 906. District Of Columbia ⇨ 33(32)

Previous landowner's failure to overcome the presumption that he was personally served with summons and complaint that sought to confirm a tax deed and quiet title in real property, which arose from the statement of personal service in the process server's return, prevented a conclusion that he acted in good faith, as factor considered on review of a denial of a motion to vacate a default judgment. *Venison v. Robinson*, 2000, 756 A.2d 906. District Of Columbia ⇨ 33(32)

§ 11-944. Contempt power.

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1. In general

"Criminal contempt" consists of a contemptuous act accompanied by a wrongful state of mind, both of which must be proved beyond a reasonable doubt, whereas "civil contempt" is more remedial in nature and requires no finding of intent. In re *Dixon*, 2004, 853 A.2d 708. Contempt ⇨ 3; Contempt ⇨ 4

Unlike criminal contempt, which is designed to punish the contemnor and to vindicate the court, civil contempt serves one of two purposes, either to enforce compliance with a court order or to compensate for losses sustained by reason of a party's non-compliance. In re *T.S.*, 2003, 829 A.2d 937.

Contempt ⇨ 3; Contempt ⇨ 20; Contempt ⇨ 74

2. Due process

Filing of indictment for criminal contempt for violation of no-contact order satisfied requirements, in Supreme Court's criminal rule, that criminal contempt must be prosecuted on notice to defendant, which must include the time and place of hearing and must state the essential facts constituting the criminal contempt charge. *Baker v. U.S.*, 2006, 891 A.2d 208. Protection Of Endangered Persons ⇨ 104

3. Acts or conduct constituting contempt of court—In general

The decision to hold a party in civil contempt lies within the sound discretion of the trial court; however, a trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law. *Giles v. Crawford Edgewood*

Trenton Terrace, 2006, 911 A.2d 1223. Contempt ⚡ 39

The elements of criminal contempt, under the general criminal contempt statute, may be satisfied upon a showing of: (1) conduct committed in the presence of the court that disrupts the orderly administration of justice, or (2) willful disobedience of a court order, committed outside the presence of the court. *Baker v. U.S.*, 2006, 891 A.2d 208. Contempt ⚡ 6; Contempt ⚡ 20

To be convicted of criminal contempt, a defendant must engage in either willful disobedience of a court order causing an obstruction of justice or contemptuous conduct committed in the presence of the court. *In re Dixon*, 2004, 853 A.2d 708. Contempt ⚡ 6; Contempt ⚡ 20

4. — Misconduct as officer of court, acts or conduct constituting contempt of court

Disbarment of attorney was warranted, in attorney disciplinary case, where attorney pled guilty to five counts of theft, two counts of fraud, and contempt of court in connection with attorney's conduct in swindling a series of landlords and prospective tenants, and attorney's offenses involved moral turpitude, thus warranting disbarment under statute. *In re Hallmark*, 2010, 998 A.2d 284. Attorney And Client ⚡ 59.14(5)

Defense counsel's violation of court order, which clearly limited scope of counsel's cross-examination of police officer and directed counsel to refrain from questioning officer about complaints against him filed by defendant, lacked the intent necessary to be contemptuous of the court, where counsel claimed confusion regarding extent of order, and he later received permission from court to explore issue of officer's bias against defendant. *In re Richard Samad*, 135 WLR 633 (Super. Ct. 2007).

6. — Disobedience to mandate, order, or judgment, acts or conduct constituting contempt of court

When a defendant has been given no guidance about how to conduct himself in a situation where literal compliance with a stay-away order of a court is impossible, criminal contempt cannot be shown. *Payne v. U.S.*, 2007, 932 A.2d 1095. Protection Of Endangered Persons ⚡ 101

Court of Appeals had jurisdiction over criminal contempt prosecution arising out of defendant's violating injunction relating to his holding himself out as a lawyer and engaging in the unauthorized practice of law; order was issued against defendant in the District of Columbia, defendant held himself out as authorized to practice law in the District, and defendant's disobedience of the prohibitions set out in the order had a direct influence upon the administration of justice. *Banks v. U.S.*, 2007, 926 A.2d 158, certiorari denied 128 S.Ct. 2984, 554 U.S. 929, 171 L.Ed.2d 905. Federal Courts ⚡ 1061

Tenant was entitled to a hearing to show cause as to why landlord should not be held in contempt of court for allegedly failing to make repairs as promised under terms of the parties' consent order, even though tenant vacated her apartment

and there was no longer a need to force compliance with the decree; in addition to compelling compliance, compensating the tenant was appropriate as a remedial objective of civil contempt. *Giles v. Crawford Edgewood Trenton Terrace*, 2006, 911 A.2d 1223. Contempt ⚡ 61(1)

Defendant's act of sending letters to complainant, after he acknowledged that he understood the trial court's order that he not have direct or indirect contact with her while he was being held in preventive pretrial detention, constituted willful disobedience, as element of criminal contempt under general criminal contempt statute. *Baker v. U.S.*, 2006, 891 A.2d 208. Protection Of Endangered Persons ⚡ 100

Even assuming that no-contact order, which trial court issued in connection with preventive pretrial detention of defendant, was invalid, defendant's failure to comply with the order constituted criminal contempt; defendant had neither objected to the order nor requested a stay or challenged the validity of the order in any way once it was issued, order was not reversed on appeal or modified after it was issued, and order, which essentially required defendant to refrain from engaging in further criminal activity, was not patently unauthorized. *Baker v. U.S.*, 2006, 891 A.2d 208. Protection Of Endangered Persons ⚡ 101

Defendant was not prejudiced by trial court's failure to identify which one of his 18 violations of civil protection order (CPO) gave rise to single conviction for criminal contempt; defendant's actions did not collectively give rise to single charge of criminal contempt but, rather, separately constituted 18 independent violations. *In re Dixon*, 2004, 853 A.2d 708. Contempt ⚡ 66(7)

Since contempt statute permitted a judge of the Superior Court to punish for disobedience of a court order, and the judge who found defendant guilty of contempt was a judge of the Superior Court, not a magistrate judge, defendant was properly convicted of contempt based on his disobedience of judge's order requiring defendant, as a condition of pretrial release, to stay away from a specific block of city. *Vest v. U.S.*, 2003, 834 A.2d 908. Contempt ⚡ 36

Contempt statute was a proper vehicle for prosecuting defendant for violation of the magistrate judge's stay away order, requiring defendant to stay away from a specific block of city as a condition of pretrial release, even though defendant might have been prosecuted as well under statute governing penalties for violation of conditions of release. *Vest v. U.S.*, 2003, 834 A.2d 908. Contempt ⚡ 20

Lack of injury to trade name owner since it allegedly was commercially inactive and was not using the name was no defense to civil contempt against competitor for violating consent decree that prohibited competitor from conducting business in the District of Columbia in the owner's corporate name; the settlement agreement entitled the owner to competitor's profits without proof of actual injury if the competitor conducted business

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in the District of Columbia using owner's name. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 28(1)

As a general proposition, civil contempt of a court order, including a consent decree, may be established only if the order allegedly violated is specific and definite or clear and unambiguous. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 20

Courts are to construe ambiguities and omissions in consent decrees as redounding to the benefit of the person charged with contempt. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 20

7. — Disobedience of child support orders, acts or conduct constituting contempt of court

Trial court had the authority to enter a civil contempt order against father due to his nonpayment of child support, even though the parties' children had all reached the age of majority; the court had continuing jurisdiction to enforce a support order, and emancipation of the child did not dilute the court's authority to enforce arrearages incurred before emancipation. *Wagley v. Evans*, 2009, 971 A.2d 205. Child Support ⇨ 444; Child Support ⇨ 460

Even in child support cases, the law generally disfavors imprisonment for debt. In *re Estate of Bonham*, 2003, 817 A.2d 192. Child Support ⇨ 497

9. Proceedings—In general

Civil contempt is not a crime, and a civil contempt proceeding remains a part of the original cause. In *re T.S.*, 2003, 829 A.2d 937. Contempt ⇨ 40

Trial court conducted an unlawful investigation into whether Department of Human Services failed to feed minor, while minor was in Department's custody, after minor brought civil contempt motion against Department; court could not conduct investigation into motion that was pending before it. In *re T.S.*, 2003, 829 A.2d 937. Contempt ⇨ 40

Criminal contempt proceedings may be prosecuted by private attorneys appointed by the court for that purpose. In *re Peak*, 2000, 759 A.2d 612, amended on denial of rehearing 829 A.2d 464. Contempt ⇨ 41.1

When a private attorney is appointed solely for contempt prosecution, that attorney is appointed to pursue the public interest in vindication of the court's authority; thus, for purposes of the contempt proceeding, the attorney so appointed represents the sovereign. In *re Peak*, 2000, 759 A.2d 612, amended on denial of rehearing 829 A.2d 464. Contempt ⇨ 41.1

Private attorney appointed to prosecute criminal contempt action had authority to execute, on behalf of the government, conditional plea agreement. In

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re Peak, 2000, 759 A.2d 612, amended on denial of rehearing 829 A.2d 464. Criminal Law ⇨ 1701

11. — Presumptions and burden of proof, proceedings

To prove criminal contempt of court, the government must prove (1) conduct committed in the presence of the court that disrupts the orderly administration of justice or (2) willful disobedience of a court order, committed outside the presence of the court; willful disobedience is found when one intentionally violates a court order. *Payne v. U.S.*, 2007, 932 A.2d 1095. Contempt ⇨ 3; Contempt ⇨ 20

11.5. — Instructions, proceedings

Trial court acted within its discretion at trial for criminal contempt when it rejected defendant's proposed jury instruction on contempt and, instead, gave standard instruction on contempt; standard instruction incorporated proposed instruction to effect that defendant did not engage in a "willful show of disrespect to the court" and did not have "a wrongful state of mind," and trial court allowed defendant to argue proposed instruction as a theory during closing argument. *Payne v. U.S.*, 2007, 932 A.2d 1095. Contempt ⇨ 61(1)

12. — Weight and sufficiency of evidence, proceedings

Evidence was sufficient to show that defendant willfully violated trial court's order for him to stay at least 100 yards away from victim, so as to support conviction for criminal contempt, even though defendant argued that he did not attempt to cause harm to victim; defendant admitted that he saw victim, yet approached anyway, to speak with his friends. *Payne v. U.S.*, 2007, 932 A.2d 1095. Protection Of Endangered Persons ⇨ 97

A trial court has the authority to reduce a series of contemptuous actions to a single instance of criminal contempt, so long as each episode is supported by substantial evidence. In *re Dixon*, 2004, 853 A.2d 708. Contempt ⇨ 3; Contempt ⇨ 60(3)

Evidence showed that defendant understood implications of civil protection order (CPO), so as to support conviction for criminal contempt for violating CPO by contacting complainant by telephone; defendant was handed copy of CPO by clerk in open court, CPO specifically and plainly prohibited contact with complainant, and there was no indication that defendant had any difficulty understanding what CPO said. In *re Dixon*, 2004, 853 A.2d 708. Protection Of Endangered Persons ⇨ 98

Defendant's contempt conviction for failure to pay \$100 fine and \$50 in court costs, which were imposed as part of defendant's sentence for second-degree theft, was lawful and constitutional, where defendant's failure to pay fine and costs was wilful, as defendant made no attempt to give court any notice that he was having difficulty in finding employment, nor did he make any effort to pay any part of the fine, which could have been paid in installments if he had asked the court for permission to do so. *Bell v. U.S.*, 2002, 806 A.2d 228. Costs ⇨ 320; Fines ⇨ 1.5

13. — Judgment or order, proceedings

Assuming that no-contact order, which trial court issued orally in connection with preventive pretrial detention of defendant, was valid, the order did not lack specificity, as would preclude defendant from being convicted of criminal contempt for violating the order; defendant responded “yes” when asked by trial court if he understood the trial court’s order to “stay completely away” from the complainant while the case was pending and to have “no contact whatsoever directly or indirectly” with complainant, and there was nothing unusual or ambiguous about such prohibition. *Baker v. U.S.*, 2006, 891 A.2d 208. *Protection Of Endangered Persons* ⇨ 101

When the underlying controversy giving rise to a civil contempt action is settled or is otherwise terminated, the contempt proceeding becomes moot insofar as it seeks to compel enforcement of a court order. *In re T.S.*, 2003, 829 A.2d 937. *Contempt* ⇨ 49

13.5. — Costs, proceedings

The trial court had the discretion to award attorney fees reasonably incurred by trade name owner to prosecute competitor for civil contempt of consent decree even absent a finding that competitor’s violation of court order was willful and even absent a specific attorney’s fee provision in the decree. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. *Contempt* ⇨ 68

The lodestar approach to attorney fees is appropriate in civil contempt proceedings. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. *Contempt* ⇨ 68

No reversal or remand was required by the trial court’s failure to articulate its reasoning further in awarding attorney fees of \$140,000 to trade name owner in proceeding to hold competitor in contempt for violating consent decree; no claim was made that the hours worked were unreasonable or unrelated to the contempt proceeding or that the attorneys’ billing rates were unreasonably high, the independent special masters evaluated the legal expenses and found them to be reasonable overall, and this primarily factual finding was not shown to be clearly erroneous. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. *Contempt* ⇨ 66(7); *Contempt* ⇨ 66(8); *Contempt* ⇨ 68

Trade name owner’s failure to succeed completely in its claims against competitor for violating consent decree and to win every legal ruling concerning laches defense and scope of decree did not require reduction in attorney fee award; the case was an exceptionally complex one that mandated an extensive investigation of the competitor’s entire course of business conduct over many years in order to establish that noncompliance with the consent decree was truly contemptuous, the full scope of the noncompliance needed to be explored and defined, and the owner prevailed on the main point. *Federal Marketing Co. v. Virginia Impres-*

sion Products Co., Inc., 2003, 823 A.2d 513. *Contempt* ⇨ 68

A court has discretion to order a civil contemnor to pay prejudgment interest when such an award is necessary to compensate fully the party aggrieved; civil contempt sanctions serve a remedial purpose, and no explicit statutory authorization is required for an award of prejudgment interest. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. *Interest* ⇨ 39(2.20)

Competitor’s contempt by violating consent decree that prohibited competitor from conducting business in the District of Columbia in the trade name owner’s name did not entitle owner to prejudgment interest; the decree specified the remedy for its violation and omitted any provision for such interest even though the parties recognized that an accounting for improper profits could cover a period of several years, the trial court could view an award without interest as sufficient, especially since the owner did not show that it would have earned any more profits itself if the competitor had complied with its obligations, and the owner was dilatory in seeking to enforce its rights under the decree. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. *Interest* ⇨ 39(2.20)

16. Sentencing or fine—In general

Under statute governing contempt power, there is no statutory limitation on length of sentence for criminal contempt. *Seals v. U.S.*, 2004, 844 A.2d 349, as amended. *Contempt* ⇨ 72

Thirty-six month sentence imposed on defendant for criminal contempt for violation of stay away order did not violate principles of proportionality; judge had before him two instances in case itself where defendant had disobeyed authority of court, judge had before him lengthy record of defendant’s arrests and some convictions for crimes committed in apparent unbroken succession, including several that by definition involved willful disregard of court orders, and thus, defendant’s conduct portrayed compelling case of need for sizeable sentence to punish his pattern of disregarding such orders. *Seals v. U.S.*, 2004, 844 A.2d 349, as amended. *Contempt* ⇨ 72

When the trial court finds a party in civil contempt, it has broad discretion to impose a temperate sanction in light of equitable considerations. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. *Contempt* ⇨ 70

19. Review—In general

Only when trial court finds that a defendant’s actions cumulatively, but not individually, rose to level of contempt will it be appropriate for appellate court to reverse a contempt conviction. *In re Dixon*, 2004, 853 A.2d 708. *Contempt* ⇨ 66(7)

Any error in trial court’s admission of complainant’s testimony that she told defendant during telephone calls that he was violating civil protection order (CPO) was harmless, in criminal con-

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tempt hearing, given sufficient other evidence of defendant's knowledge of CPO and his willful violation of it. In re Dixon, 2004, 853 A.2d 708. Protection Of Endangered Persons ⇨ 135

Decision whether to hold a party in civil contempt is confided to the sound discretion of the trial judge, and will be reversed on appeal only upon a clear showing of abuse of discretion. In re T.S., 2003, 829 A.2d 937. Contempt ⇨ 39; Contempt ⇨ 66(7)

Minor's civil contempt motion against Department of Human Services, based on Department's alleged failure to feed minor while in Department's custody, lost any relevance when underlying person in need of supervision (PINS) case against minor was dismissed on same day contempt motion was filed, and thus trial court committed harmless error when it denied motion after conducting an unlawful investigation into motion; minor was not

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prejudiced, as motion was subjected to dismissal regardless of improper investigation. In re T.S., 2003, 829 A.2d 937. Contempt ⇨ 49; Contempt ⇨ 66(7)

Laches is not, strictly speaking, a defense in a civil contempt proceeding, but the decision whether to hold a party in civil contempt is confided to the sound discretion of the trial judge and will be reversed on appeal only upon a clear showing of abuse of discretion. Federal Marketing Co. v. Virginia Impression Products Co., Inc., 2003, 823 A.2d 513. Contempt ⇨ 46

Defendant failed to preserve for appellate review his claim that \$100 fine was an impermissible additional penalty for his original crime of theft, in prosecution for contempt for failure to pay \$100 fine and \$50 in court costs, where defendant failed to raise issue at contempt hearing. Bell v. U.S., 2002, 806 A.2d 228. Contempt ⇨ 66(5)

§ 11-946. Rules of court.

Notes of Decisions

1. Power to regulate procedure

Merely classifying rule permitting dismissal of motion for post-conviction relief when government has been prejudiced by delayed filing as "legislative in nature," because of general statutory power of superior court to adopt procedural rules, did not overcome principle that board of judges could not adopt any rule that conflicted with controlling case law. U.S. v. Arnold, 133 WLR 211 (Super. Ct. 2004).

3. Construction and application of rules

Rule of civil procedure requiring pretrial disclosure of facts known and opinions held by experts is construed in light of the corresponding federal rule, taking guidance from both the advisory committee notes to the federal rule and federal court decisions interpreting the rule. Gubbins v. Hurson, 2005, 885 A.2d 269, appeal after new trial 987 A.2d 466. Federal Courts ⇨ 1052.1

Pretrial disclosure requirement of rule of civil procedure governing discovery of facts known and opinions held by experts applies only to facts and

opinions that the expert acquired or developed in anticipation of litigation or for trial. Gubbins v. Hurson, 2005, 885 A.2d 269, appeal after new trial 987 A.2d 466. Federal Courts ⇨ 1052.1

Statute requiring the superior court to conduct its business according to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure does not grant authority for rule allowing the Court of Appeals to permit an appeal from an order of the superior court granting or denying class action certification, even if the superior court does not certify that the interlocutory order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation or case; the statute addresses only the conduct of business in the superior court, and the Court of Appeals' jurisdiction is not part of the business of the superior court. Ford v. ChartOne, Inc., 2003, 834 A.2d 875. Federal Courts ⇨ 1062

Chapter 11

Family Court of the Superior Court.

Section

- 11-1101. Jurisdiction of the Family Court.
- 11-1102. Use of alternative dispute resolution.
- 11-1103. Standards of practice for appointed counsel.

Section

- 11-1104. Administration.
- 11-1105. Social services and other related services.
- 11-1106. Reports to Congress.

§ 11-1101. Jurisdiction of the Family Court.

(a) *In general.* — The Family Court of the District of Columbia shall be assigned and have original jurisdiction over —

- (1) actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente lite and permanent, and for support and custody of minor children;

- (2) applications for revocation of divorce from bed and board;
- (3) actions to enforce support of any person as required by law;
- (4) actions seeking custody of minor children, including petitions for writs of habeas corpus;
- (5) actions to declare marriages void;
- (6) actions to declare marriages valid;
- (7) actions for annulments of marriage;
- (8) determinations and adjudications of property rights, both real and personal, in any action referred to in this section, irrespective of any jurisdictional limitation imposed on the Superior Court;
- (9) proceedings in adoption;
- (10) proceedings under the Act of July 10, 1957 (D.C. Code, secs. 30-301 to 30-324 [D.C. Official Code, §§ 46-701 to 46-724]);
- (11) proceedings to determine paternity of any child born out of wedlock;
- (12) civil proceedings for protection involving intrafamily offenses, instituted pursuant to chapter 10 of title 16;
- (13) proceedings in which a child, as defined in section 16-2301, is alleged to be delinquent, neglected, or in need of supervision;
- (14) proceedings under chapter 5 of title 21 relating to the commitment of the mentally ill;
- (15) proceedings under chapter 13 of title 7 relating to the commitment of the at least moderately mentally retarded; and
- (16) proceedings under Interstate Compact on Juveniles (described in title IV of the District of Columbia Court Reform and Criminal Procedure Act of 1970).

(b) *Definition.* —

(1) *In general.* — In this chapter, the term “action or proceeding” with respect to the Family Court refers to cause of action described in paragraphs (1) through (16) of subsection (a).

(2) *Exception.* — An action or proceeding may be assigned to or retained by cross-jurisdictional units established by the Superior Court, including the Domestic Violence Unit.

(July 29, 1970, 84 Stat. 488, Pub. L. 91-358, title I, 111; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, 2(a)(2), (3); Jan. 8, 2002, 115 Stat. 2108, Pub. L. 107-114, § 4(a).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 107-114 rewrote the section which had read as follows:

“§ 11-1101. Exclusive Jurisdiction.”

“The Family Division of the Superior Court shall be assigned, in accordance with Chapter 9, exclusive jurisdiction of—

“(1) actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente lite and permanent, and for support and custody of minor children;

“(2) applications for revocation of divorce from bed and board;

“(3) actions to enforce support of any person as required by law;

“(4) actions seeking custody of minor children, including petitions for writs of habeas corpus;

“(5) actions to declare marriages void;

“(6) actions to declare marriages valid;

“(7) actions for annulments of marriage;

“(8) determinations and adjudications of property rights, both real and personal, in any action referred to in this section, irrespective of any jurisdictional limitation imposed on the Superior Court;

“(9) proceedings in adoption;

“(10) proceedings under the Act of July 10, 1957 (D.C. Official Code, secs. 46-701 to 46-724);

“(11) proceedings to determine paternity of any child born out of wedlock;

“(12) civil proceedings for protection involving intrafamily offenses, instituted pursuant to Chapter 10 of Title 16;

“(13) proceedings in which a child, as defined in section 16-2301, is alleged to be delinquent, neglected, or in need of supervision;

“(14) proceedings under Chapter 5 of Title 21 relating to the commitment of the mentally ill;

“(15) proceedings under Chapter 11 of Title 21 relating to the commitment of the substantially retarded; and

“(16) proceedings under Interstate Compact on Juveniles (described in title IV of the District of Columbia Court Reform and Criminal Procedure Act of 1970)”.

References in Text

Title IV of the District of Columbia Court Reform and Criminal Procedure Act of 1970, referred to in subsec. (a)(16), is Pub. L. 91-358, 84 Stat. 473, July 29, 1970, which is not codified.

Miscellaneous Notes

Pub. L. 107-114, § 4(c), provides:

“Plan for integrating computer systems.—”

“(1) In general.—Not later than 6 months after the date of the enactment of this Act [Jan. 8, 2002], the Mayor of the District of Columbia shall submit to the President and Congress a plan for integrating the computer systems of the District government with the computer systems of the

Superior Court of the District of Columbia so that the Family Court of the Superior Court and the appropriate offices of the District government which provide social services and other related services to individuals and families served by the Family Court of the Superior Court (including the District of Columbia Public Schools, the District of Columbia Housing Authority, the Child and Family Services Agency, the Office of the Corporation Counsel, the Metropolitan Police Department, the Department of Health, and other offices determined by the Mayor) will be able to access and share information on the individuals and families served by the Family Court.

“(2) Authorization of appropriations.—There are authorized to be appropriated to the Mayor of the District of Columbia such sums as may be necessary to carry out paragraph (1).”

Notes of Decisions

Child support 6.5

Foreign property 8

Parties 3.5

Property settlement 9

Remand 10

1. In general

Family Division of Superior Court was not jurisdictionally prohibited from entertaining former wife's complaint for entry of judgment by confession relative to post-dissolution settlement, where, although original action could have been brought in Civil Division, action stemmed from suit, on wife's motion for contempt, which was indisputably within Family Division's jurisdiction, and underlying jurisdictional grants to Family Division pointed in favor of its retaining jurisdiction over the complaint for entry of judgment by confession. *Hackney v. Chamblee*, 2009, 980 A.2d 427. Federal Courts ⇨ 1051

3.5. Parties

Statutes governing family court's jurisdiction of actions seeking custody of minor children contemplate an award of custody only as between parents who are parties to a divorce proceeding. *K.R. v. C.N.*, 2009, 969 A.2d 257. Child Custody ⇨ 405

6. Dependent and neglected juveniles

Superior Court's authority under the divorce law does not permit it to conduct a de facto child neglect proceeding without invoking the procedures prescribed by the legislature for neglect proceedings. *W.D. v. C.S.M.*, 2006, 906 A.2d 317. Child Custody ⇨ 505

6.5. Child support

Trial court had subject matter to issue permanent child support order, even though parties no longer resided in District of Columbia, where mother and child resided in District at time mother filed action and issues to be determined at time of filing had not yet been resolved. *Brown v. Hines-Williams*, 2010, 2 A.3d 1077. Child Support ⇨ 507

8. Foreign property

In a divorce action, the court may adjudicate the rights to marital property located outside the District, and may issue orders requiring the parties to make transfers implementing the court's ruling, even though the court cannot directly award and apportion the foreign property. *Davis v. Davis*, 2008, 957 A.2d 576, amended on rehearing. Divorce ⇨ 671

9. Property settlement

Trial court was not required to address property issues in order to entertain divorce proceeding initiated by husband, where court made no finding that it had personal jurisdiction over wife, who lived in Mississippi. *Davis v. Davis*, 2008, 957 A.2d 576, amended on rehearing. Divorce ⇨ 62(5)

10. Remand

Remand for a decision to retain jurisdiction over husband's divorce action against non-resident wife or to dismiss the action on forum non conveniens grounds was required by possibility that the trial court dismissed the action only because of its error in thinking that it was required to adjudicate the parties' property rights if it exercised jurisdiction. *Davis v. Davis*, 2008, 957 A.2d 576, amended on rehearing. Divorce ⇨ 1323(1)

§ 11-1102. Use of alternative dispute resolution.

To the greatest extent practicable and safe, cases and proceedings in the Family Court of the Superior Court shall be resolved through alternative dispute resolution procedures, in accordance with such rules as the Superior Court may promulgate.

(Jan. 8, 2002, 115 Stat. 2100, Pub. L. 107-114, § 4(a).)

§ 11-1103. Standards of practice for appointed counsel.

The Superior Court shall establish standards of practice for attorneys appointed as counsel in the Family Court of the Superior Court.

(Jan. 8, 2002, 115 Stat. 2108, Pub. L. 107-114, § 4(a).)

§ 11-1104. Administration.

(a) *“One family, one judge” requirement for cases and proceedings.* — To the greatest extent practicable, feasible, and lawful, if an individual who is a party to an action or proceeding assigned to the Family Court has an immediate family or household member who is a party to another action or proceeding assigned to the Family Court, the individual's action or proceeding shall be assigned to the same judge or magistrate judge to whom the immediate family member's action or proceeding is assigned.

(b) *Retention of jurisdiction over cases.* —

(1) *In general.* — In addition to the requirement of subsection (a), any action or proceeding assigned to the Family Court of the Superior Court shall remain under the jurisdiction of the Family Court until the action or proceeding is finally disposed, except as provided in paragraph (2)(D).

(2) *One family, one judge.* —

(A) *For the duration.* — An action or proceeding assigned pursuant to this subsection shall remain with the judge or magistrate judge in the Family Court to whom the action or proceeding is assigned for the duration of the action or proceeding to the greatest extent practicable, feasible, and lawful, subject to subparagraph (2)(C).

(B) *All cases involving an individual.* — If an individual who is a party to an action or proceeding assigned to the Family Court becomes a party to another action or proceeding assigned to the Family Court, the individual's subsequent action or proceeding shall be assigned to the same judge or magistrate judge to whom the individual's initial action or proceeding is assigned to the greatest extent practicable and feasible.

(C) *Family court case retention.* — If the full term of a Family Court judge to whom the action or proceeding is assigned is completed prior to the final disposition of the action or proceeding, the presiding judge of the Family Court shall ensure that the matter or proceeding is reassigned to a judge serving on the Family Court.

(D) *Exception.* — A judge whose full term on the Family Court is completed but who remains in Superior Court may retain the case or proceeding for not more than 6 months or, in extraordinary circumstances, for not more than 12 months after ceasing to serve if —

(i) the case remains at all times in full compliance with Public Law 105-89, if applicable; and

(ii) if Public Law 105-89 is applicable, the chief judge determines, in consultation with the presiding judge of the Family Court, based on the record in the case and any unique expertise, training or knowledge of the case that the judge might have, that permitting the judge to retain the case would lead to permanent placement of the child more quickly than reassignment to a judge in the Family Court.

(3) *Standards of judicial ethics.* — The actions of a judge or magistrate judge in retaining an action or proceeding under this paragraph shall be subject to applicable standards of judicial ethics.

(c) *Training program.* —

(1) *In general.* — The chief judge, in consultation with the presiding judge of the Family Court, shall carry out an ongoing program to provide training in family law and related matters for judges of the Family Court and other judges of the Superior Court who are assigned Family Court cases, including magistrate judges, attorneys who practice in the Family Court, and appropriate nonjudicial personnel, and shall include in the program information and instruction regarding the following:

(A) Child development.

(B) Family dynamics, including domestic violence.

(C) Relevant Federal and District of Columbia laws.

(D) Permanency planning principles and practices.

(E) Recognizing the risk factors for child abuse.

(F) Any other matters the presiding judge considers appropriate.

(2) *Use of cross-training.* — The program carried out under this section shall use the resources of lawyers and legal professionals, social workers, and experts in the field of child development and other related fields.

(d) *Accessibility of materials, services, and proceedings; promotion of “family-friendly” environment.* —

(1) *In general.* — To the greatest extent practicable, the chief judge and the presiding judge of the Family Court shall ensure that the materials and services provided by the Family Court are understandable and accessible to the individuals and families served by the Family Court, and that the Family Court carries out its duties in a manner which reflects the special needs of families with children.

(2) *Location of proceedings.* — To the maximum extent feasible, safe, and practicable, cases and proceedings in the Family Court shall be conducted at locations readily accessible to the parties involved.

(e) *Integrated computerized case tracking and management system.* — The Executive Officer of the District of Columbia courts under section 11-1703 shall work with the chief judge of the Superior Court —

(1) to ensure that all records and materials of cases and proceedings in the Family Court are stored and maintained in electronic format accessible by computers for the use of judges, magistrate judges, and nonjudicial personnel of the Family Court, and for the use of other appropriate offices of the District government in accordance with the plan for integrating computer systems prepared by the Mayor of the District of Columbia under section 4(b) [4(c)] of the District of Columbia Family Court Act of 2001 [§ 11-1101, note];

(2) to establish and operate an electronic tracking and management system for cases and proceedings in the Family Court for the use of judges and nonjudicial personnel of the Family Court, using the records and materials stored and maintained pursuant to paragraph (1); and

(3) to expand such system to cover all divisions of the Superior Court as soon as practicable.

(Jan. 8, 2002, 115 Stat. 2108, Pub. L. 107-114, § 4(a).)

Historical and Statutory Notes

References in Text

Section 4(b) [4(c)] of the District of Columbia Family Court Act of 2001, referred to in paragraph (e)(1), is classified to § 11-721.

§ 11-1105. Social services and other related services.

(a) *Onsite coordination of services and information.* —

(1) *In general.* — The Mayor of the District of Columbia, in consultation with the chief judge of the Superior Court, shall ensure that representatives of the appropriate offices of the District government which provide social services and other related services to individuals and families served by the Family Court (including the District of Columbia Public Schools, the District of Columbia Housing Authority, the Child and Family Services Agency, the Office of the Corporation Counsel, the Metropolitan Police Department, the Department of Health, and other offices determined by the Mayor) are available on-site at the Family Court to coordinate the provision of such services and information regarding such services to such individuals and families.

(2) *Duties of heads of offices.* — The head of each office described in paragraph (1), including the Superintendent of the District of Columbia Public Schools and the Director of the District of Columbia Housing Authority, shall provide the Mayor with such information, assistance, and services as the Mayor may require to carry out such paragraph.

(b) *Appointment of social services liaison with family court.* — The Mayor of the District of Columbia shall appoint an individual to serve as a liaison between the Family Court and

the District government for purposes of subsection (a) and for coordinating the delivery of services provided by the District government with the activities of the Family Court and for providing information to the judges, magistrate judges, and nonjudicial personnel of the Family Court regarding the services available from the District government to the individuals and families served by the Family Court. The Mayor shall provide on an ongoing basis information to the chief judge of the Superior Court and the presiding judge of the Family Court regarding the services of the District government which are available for the individuals and families served by the Family Court.

(Jan. 8, 2002, 115 Stat. 2110, Pub. L. 107–114, § 4(a).)

§ 11–1106. Reports to Congress.

Not later than 90 days after the end of each calendar year, the chief judge of the Superior Court shall submit a report to Congress on the activities of the Family Court during the year, and shall include in the report the following:

(1) The chief judge's assessment of the productivity and success of the use of alternative dispute resolution pursuant to section 11–1102.

(2) Goals and timetables as required by the Adoption and Safe Families Act of 1997 to improve the Family Court's performance in the following year.

(3) Information on the extent to which the Family Court met deadlines and standards applicable under Federal and District of Columbia law to the review and disposition of actions and proceedings under the Family Court's jurisdiction during the year.

(4) Information on the progress made in establishing locations and appropriate space for the Family Court that are consistent with the mission of the Family Court until such time as the locations and space are established.

(5) Information on any factors which are not under the control of the Family Court which interfere with or prevent the Family Court from carrying out its responsibilities in the most effective manner possible.

(6) Information on —

(A) the number of judges serving on the Family Court as of the end of the year;

(B) how long each such judge has served on the Family Court;

(C) the number of cases retained outside the Family Court;

(D) the number of reassignments to and from the Family Court; and

(E) the ability to recruit qualified sitting judges to serve on the Family Court.

(7) Based on outcome measures derived through the use of the information stored in electronic format under section 11–1104(d), an analysis of the Family Court's efficiency and effectiveness in managing its case load during the year, including an analysis of the time required to dispose of actions and proceedings among the various categories of the Family Court's jurisdiction, as prescribed by applicable law and best practices, including (but not limited to) best practices developed by the American Bar Association and the National Council of Juvenile and Family Court Judges.

(8) If the Family Court failed to meet the deadlines, standards, and outcome measures described in the previous paragraphs, a proposed remedial action plan to address the failure.

(Jan. 8, 2002, 115 Stat. 2111, Pub. L. 107–114, § 4(a).)

Historical and Statutory Notes

References in Text

The Adoption and Safe Families Act of 1997, referred to in par. (2), is Pub. L. 105–89, 111 Stat. 2115.

Chapter 12

Tax Division of the Superior Court.

Section

- 11–1201. Exclusive jurisdiction.
11–1202. Abolition of other remedies.

§ 11–1201. Exclusive jurisdiction.

Notes of Decisions

1. In general

District of Columbia courts have exclusive jurisdiction over challenges to assessments and claims for refunds of District of Columbia taxes. Jenkins

v. Washington Convention Center, C.A.D.C.2001, 236 F.3d 6, 344 U.S.App.D.C. 315. Federal Courts ⇌ 1138

§ 11–1202. Abolition of other remedies.

Notes of Decisions

1. In general

District of Columbia courts have exclusive jurisdiction over challenges to assessments and claims for refunds of District of Columbia taxes. Jenkins v. Washington Convention Center, C.A.D.C.2001, 236 F.3d 6, 344 U.S.App.D.C. 315. Federal Courts ⇌ 1138

Federal district court was precluded from exercising jurisdiction over action brought by members of unincorporated businesses (UB) seeking declaratory judgment that imposition of District of Columbia's UB franchise tax on them, as non-resident members of a UB, was unlawful under the federal Constitution and District of Columbia's Home Rule

Act; District of Columbia's jurisdiction granting code provisions vested its Superior Court with exclusive jurisdiction regarding review of the validity or amount of District of Columbia tax assessments, including federal and constitutional issues, and, while business members argued they were challenging the imposition of a tax, rather than the assessment, the common legal definition of "assessment" included imposition of a tax, and the members had to be challenging their actual tax liability as assessed in order to have standing. Fernebok v. District of Columbia, 2008, 534 F.Supp.2d 25. Federal Courts ⇌ 1133; Federal Courts ⇌ 1138

Chapter 15

Judges of the District of Columbia Courts.

Subchapter III. Retirement.

Section

- 11–1568.01. Opportunity to revoke a previous survivor annuity election.
11–1568.02. Additional opportunity to make a survivor annuity election.

Section

- 11–1568.03. Period for exercise of right to revoke or elect.
11–1570. The District of Columbia Judicial Retirement and Survivors Annuity Fund.

SUBCHAPTER III. RETIREMENT.

§ 11–1568.01. Opportunity to revoke a previous survivor annuity election.

Historical and Statutory Notes

Miscellaneous Notes

Section 23(b) of D.C. Law 15–354 provides that the section designation of § 11–1568.1 of the Dis-

trict of Columbia Official Code is redesignated as § 11–1568.01.

§ 11-1568.02. Additional opportunity to make a survivor annuity election.**Historical and Statutory Notes****Miscellaneous Notes**

Section 23(c) of D.C. Law 15-354 provides that the section designation of § 11-1568.2 of the Dis-

trict of Columbia Official Code is redesignated as § 11-1568.02.

§ 11-1568.03. Period for exercise of right to revoke or elect.**Historical and Statutory Notes****Miscellaneous Notes**

Section 23(d) of D.C. Law 15-354 provides that the section designation of § 11-1568.3 of the Dis-

trict of Columbia Official Code is redesignated as § 11-1568.03.

§ 11-1570. The District of Columbia Judicial Retirement and Survivors Annuity Fund.

(a) There is established in the Treasury a fund known as the District of Columbia Judicial Retirement and Survivors Annuity Fund (hereafter in this section referred to as the 'Fund'), which shall consist of the following assets:

(1) Amounts deposited by, or deducted and withheld from the salary and retired pay of, a judge under section 1563 or 1567 of this title, which shall be credited to an individual account of the judge.

(2) Amounts transferred from the District of Columbia Judges' Retirement Fund under section 124(c)(1) of the District of Columbia Retirement Reform Act, as amended by section 11252 of the Balanced Budget Act of 1997.

(3) Amounts deposited under subsection (d) [of this section].

(4) Any return on investment of the assets of the Fund.

(b)(1) The Secretary of the Treasury (hereafter in this section referred to as the "Secretary") shall be responsible for the administration of the Fund. The Secretary may carry out such responsibilities through an agreement with a Trustee or contractor (who may be the Trustee or contractor appointed to carry out responsibilities relating to Federal benefit payments under subtitle A of title XI of the Balanced Budget Act of 1997 and an enrolled actuary (as defined in section 7701(a)(35) of the Internal Revenue Code of 1986) who is a member of the American Academy of Actuaries (who may be the enrolled actuary engaged under such Act). Notwithstanding any other provision of District law or any other law, rule, or regulation, any Trustee, contractor, or enrolled actuary selected by the Secretary under this subsection may, with the approval of the Secretary, enter into one or more subcontracts with the District of Columbia government or any person to provide services to such Trustee, contractor, or enrolled actuary in connection with its performance of its agreement with the Secretary. Such Trustee, contractor, or enrolled actuary shall monitor the performance of any subcontract to which it is a party and enforce its provisions.

(2) The Secretary shall submit to the President an annual estimate of the expenditures necessary for the maintenance and operation of the Fund, and such supplemental estimates as may be required from time to time for the same purposes, according to law.

(3) The Secretary may cause periodic examinations of the Fund to be made by an enrolled actuary (as defined in section 7701(a)(35) of the Internal Revenue Code of 1986) who is a member of the American Academy of Actuaries.

(c)(1) Amounts in the Fund are available —

(A) for the payment of judges retirement pay, annuities, refunds, and allowances under this subchapter;

(B) to cover the reasonable and necessary expenses of administering the Fund under any agreement entered into with a Trustee, contractor, or enrolled actuary under subsection (b)(1), including any agreement with a department, agency, or instrumentality of the United States; and

(C) to cover the reasonable and necessary administrative expenses incurred by the Secretary in carrying out the Secretary's responsibilities under this subchapter.

(2) Notwithstanding any other provision of District law or any other law (other than the Internal Revenue Code of 1986), rule, or regulation —

(A) the Secretary may review benefit determinations under this subchapter made prior to the date of the enactment of the Balanced Budget Act of 1997 [August 5, 1997], and shall make initial benefit determination after such date; and

(B) the Secretary may recoup or recover, or waive recoupment or recovery of, any amounts paid under this subchapter as a result of errors or omissions by any person.

(3)(A) In accordance with procedures approved by the Secretary, the Secretary shall provide to any individual whose claim for a benefit under this subchapter has been denied in whole or in part—

(i) adequate written notice of such denial, setting forth the specific reasons for the denial in a manner calculated to be understood by the average participant in the program of benefits under this subchapter; and

(ii) a reasonable opportunity for a full and fair review of the decision denying such claim.

(B) Any factual determination made by the Secretary pursuant to this paragraph shall be presumed correct unless rebutted by clear and convincing evidence. The Secretary's interpretation and construction of the benefit provisions of this subchapter shall be entitled to great deference.

(d)(1) The Secretary shall pay into the Fund from the General Fund of the Treasury, not later than the close of each fiscal year, an amount equal to the sum of —

(A) the normal cost for the year;

(B) the annual amortization amount for the year (which may not be less than zero); and

(C) the covered administrative expenses for the year.

(2) For purposes of this subsection:

(A) The "original unfunded liability" is the amount that is the present value as of September 30, 1997, of future benefits payable from the Fund (net of the sum of the present value of future normal costs and plan assets as of such date).

(B) The "annual amortization amount" is the amount determined by the enrolled actuary to be necessary to amortize in equal annual installments (until fully amortized) —

(i) the original unfunded liability over a 30-year period;

(ii) a net experience gain or loss over a 10-year period; and

(iii) any other changes in actuarial liability over a 20-year period.

(C) The "covered administrative expenses" are the expenses determined by the Secretary (on an annual basis) to be necessary to administer the Fund.

(3) Deposits made under this subsection shall not be credited to the account of any individual.

(e) The Secretary shall invest such portion of the Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(f) None of the moneys mentioned in this subchapter shall be assignable, either in law or in equity, or be subject to execution, levy, attachment, garnishment, or other legal process (except to the extent permitted pursuant to the District of Columbia Spouse Equity Act of 1988 [subchapter VI of Chapter 5 of Title 1]).

(g) Notwithstanding any other provision of District law, rule, or regulation, any civil action brought —

(1) by an individual to enforce or clarify rights to benefits from the Fund; or

(2) by the Secretary —

(A) to enforce any claim arising (in whole or in part) under this section or any contract entered into to carry out this section,

(B) to recover benefits improperly paid from the Fund or to clarify an individual's rights to benefits from the Fund, or

(C) to enforce any provision of this section or any contract entered into to carry out this section,

shall be brought in the United States District Court for the District of Columbia.

(h) For purposes of the Internal Revenue Code of 1986 —

(1) the Fund shall be treated as a trust described in section 401(a) of the Code that is exempt from taxation under section 501(a) of the Code;

(2) any transfer to or distribution from the Fund shall be treated in the same manner as a transfer to or distribution from a trust described in section 401(a) of the Code; and

(3) the benefits provided by the Fund shall be treated as benefits provided under a governmental plan maintained by the District of Columbia.

(i) For purposes of the Employee Retirement Income Security Act of 1974, the benefits provided by the Fund shall be treated as benefits provided under a governmental plan maintained by the District of Columbia.

(j) To the extent that any provision of subpart A of part I of subchapter D of the chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 401 et seq.) is amended after the date of the enactment of this subsection, such provision as amended shall apply to the Fund only to the extent the Secretary determines that application of the provision as amended is consistent with the administration of this subchapter.

(k) Federal obligations for benefits under this subchapter are backed by the full faith and credit of the United States.

(l) The provisions of section 664 of title 18, United States Code (relating to theft or embezzlement from employee benefit plans), shall apply to the Fund.

(July 29, 1970, 84 Stat. 507, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 124(b)(4); Aug. 5, 1997, 111 Stat. 756, Pub. L. 105-33, §§ 11251(a), 11253(a)(1); Oct. 21, 1998, 112 Stat. 2419, Pub. L. 105-274, § 2(a); Oct. 21, 1998, 112 Stat. 2681-533, Pub. L. 105-277, § 804(a); Dec. 23, 2004, 118 Stat. 3970, Pub. L. 108-489, § 3(a)(1), (b)(1).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 108-489, in subsec. (c), added par. (3); and added subsec. (l).

Effective Dates

Pub. L. 108-489, § (3)(a)(2), provides that: "The amendment made by paragraph (1) shall apply with respect to claims for benefits which are made after the date of the enactment of this Act [Dec. 23, 2004]."

Pub. L. 108-489, § (3)(b)(2) provides that: "The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act [Dec. 23, 2004]."

References in Text

Subtitle A of Title XI of the Balanced Budget Act of 1997, referred to in (b)(1) and (c)(2)(A), is subtitle A of title XI of Pub. L. 105-33, 111 Stat. 731.

Chapter 17

Administration of District of Columbia Courts.

Subchapter I. Court Administration.		Section
Section	Administration of District of Columbia court system.	11-1723. Fiscal Officer.
		11-1724. Auditor-Master.
		11-1726. Compensation and benefits for court personnel.
		11-1728. Recruitment and training of personnel and travel.
11-1701.	Oath of the Executive Officer.	11-1729. Service of United States marshal.
Subchapter II. Court Personnel.		11-1732. Magistrate judges.
11-1722.	Director of Social Services.	11-1732A. Special rules for magistrate judges of the Family Court of the Superior

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Section

Court and the Domestic Violence
Unit.

Section

Subchapter III. Duties and Responsibilities.

11-1742a. Multiyear contracting authority and
leasing agreements.

SUBCHAPTER I. COURT ADMINISTRATION.

§ 11-1701. Administration of District of Columbia court system.

(a) There shall be a Joint Committee on Judicial Administration in the District of Columbia (hereafter in this chapter referred to as the "Joint Committee") consisting of (1) the Chief Judge of the District of Columbia Court of Appeals, who shall serve as Chair, (2) an associate judge of that court elected annually by the judges thereof, (3) the Chief Judge of the Superior Court, and (4) two associate judges of that court elected annually by the judges thereof.

(b) The Joint Committee shall have responsibility within the District of Columbia court system for the following matters:

(1) General personnel policies, including those for recruitment, removal, compensation, and training.

(2) Accounts and auditing.

(3) Procurement and disbursement.

(4) Submission of the annual budget requests of the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, and the District of Columbia Court System as the integrated budget of the District of Columbia courts, except that such requests may be modified upon the concurrence of four of the five members of the Joint Committee.

(5) Repealed.

(6) Formulation and enforcement of standards for outside activities of and receipt of compensation by the judges of the District of Columbia court system.

(7) Development and coordination of statistical and management information systems and reports supporting the annual report of the District of Columbia court system.

(8) Liaison between the District of Columbia court system and the court systems of other jurisdictions, including the Judicial Conference of the United States, the Judicial Conference of the District of Columbia Circuit, and the Federal Judicial Center.

(9) With the concurrence of the respective chief judges of the District of Columbia courts, other policies and practices of the District of Columbia court system and resolution of other matters which may be of joint and mutual concern of the District of Columbia Court of Appeals and the Superior Court.

(c) The Joint Committee, with the assistance of the Executive Officer of the District of Columbia courts, shall —

(1) consider and evaluate the business of the courts and means of improving the administration of justice within the District of Columbia court system and shall report thereon in its annual report;

(2) prepare and publish an annual report of the District of Columbia court system regarding the work of the courts, the performance of the duties enumerated in this chapter, and of any recommendations relating to the courts;

(3) recommend from time to time to the Congress changes in the organization, jurisdiction, operation, and procedures of the courts which are appropriate for legislative action, and institute such changes, pursuant to the responsibilities enumerated in subsection (b), in the methods of administering judicial business in the court system as would improve the administration of justice; and

(4) arrange for such training seminars, and other related services, as are desirable and feasible for judges and other court personnel, including services from the Federal Judicial Center on a reimbursable basis.

(d) The Joint Committee shall have authority to issue all orders and directives necessary to implement the responsibilities and duties enumerated in this section.

(July 29, 1970, 84 Stat. 508, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(80), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 752, Pub. L. 105-33, § 11242(a); Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 329; Oct. 16, 2006, 120 Stat. 2026, Pub. L. 109-356, § 116(a).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 108-335 repealed subsec. (b)(5) which had read as follows:

“(5) Approval of the bonds of fiduciary employees within the District of Columbia court system.”

Pub. L. 109-356 made a technical correction to Pub. L. 108-335 that did not change the text of the section.

Effective Dates

Section 116(c) of Pub. L. 109-356 provides that the amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 [Pub. L. 108-335].

§ 11-1704. Oath of the Executive Officer.

The Executive Officer shall take an oath or affirmation for the faithful and impartial discharge of the duties of that office.

(July 29, 1970, 84 Stat. 510, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(83), 108 Stat. 713; Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 329; Oct. 16, 2006, 120 Stat. 2026, Pub. L. 109-356, § 116(a).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 108-335 repealed subsec. (b) which had read as follows:

“(b) The Executive Officer shall give bond, with two or more sureties, to be approved by the Joint Committee, in an amount prescribed by the Joint Committee, faithfully to discharge the duties of that office.”

Pub. L. 109-356 made a technical correction to Pub. L. 108-335 that deleted the subsec. (a) designation.

Effective Dates

Section 116(c) of Pub. L. 109-356 provides that the amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 [Pub. L. 108-335].

SUBCHAPTER II. COURT PERSONNEL.

§ 11-1722. Director of Social Services.

(a) There shall be a Director of Social Services in the Superior Court who shall have charge of all juvenile social services for the Superior Court. The Director shall have no jurisdiction over any adult under supervision. With respect to juveniles, the Director shall provide intake procedures, counseling, education and training programs, probation services, and such other services as the court shall prescribe.

(b) To the maximum extent feasible, the Director shall coordinate with and utilize the services of appropriate public and private agencies within the District of Columbia, including the agency established by section 11233(a) of the National Capital Revitalization and self-government [Self-Government] Improvement Act of 1997 [D.C. Official Code § 24-133(a)], and shall coordinate and provide administrative services to volunteers utilized by the Superior Court or any divisions thereof.

(c) As directed by the Executive Officer, the Director shall conduct studies and make reports relating to the utilization of juvenile social services as an adjunct to the Superior Court.

(d) The Director shall make recommendations with respect to the consolidation or disposition of causes before the court relating to members of the same family or household.

(July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(85), 108 Stat. 713; Oct. 21, 1998, 112 Stat. 2681-147, Pub. L. 105-277, § 158(b); Dec. 21, 2001, 115 Stat. 928, Pub. L. 107-96, par. 18.)

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Historical and Statutory Notes

Effect of Amendments

Pub. L. 107-96, in subsec. (a), deleted “, subject to the supervision of the Executive Officer” following “for the Superior Court” in the first sentence.

§ 11-1723. Fiscal Officer.

(a) There shall be a Fiscal Officer in the District of Columbia court system who shall be responsible for the budget of the court system and for the accounts of the courts, subject to the supervision of the Executive Officer.

(b) The Fiscal Officer shall receive, safeguard, and account for all fees, costs, payments, and deposits of money or other items, and shall be responsible for depositing in the Treasury of the United States all fines, forfeitures, fees, unclaimed deposits, and other moneys.

(c) The Fiscal Officer shall be responsible for the approval of vouchers and shall arrange for an annual independent audit of the accounts of the courts.

(July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(86), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 752, Pub. L. 105-33, § 11242(b); Dec. 21, 2001, 115 Stat. 928, Pub. L. 107-96, par. 18; Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 329; Oct. 16, 2006, 120 Stat. 2027, Pub. L. 109-356, § 116(a).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 107-96 deleted “and the internal auditing of the accounts of the courts” following “vouchers” in subsec. (a), par. (3).

Pub. L. 108-335 repealed subsec. (b) which had read as follows:

(b) “The Fiscal Officer shall give bond with two or more sureties, to be approved by the Joint Committee, in an amount prescribed by the Joint Committee, faithfully to discharge the duties of that office.”

Pub. L. 109-356 made a technical correction to Pub. L. 108-335 that deleted paragraph designation (1) in subsec. (a) and redesignated pars. (a)(2) and (3) as subsecs. (b) and (c).

Effective Dates

Section 116(c) of Pub. L. 109-356 provides that the amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 [Pub. L. 108-335].

§ 11-1724. Auditor-Master.

There shall be an Auditor-Master of the Superior Court who shall (1) execute orders of reference referred by the Superior Court and perform duties in connection with the execution of such orders in accordance with Rule 53 of the Federal Rules of Civil Procedure or other applicable rule, and (2) perform such other functions as may be assigned by the Superior Court.

(July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 5(a); June 13, 1994, Pub. L. 103-266, § 1(b)(87), 108 Stat. 713; Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 329; Oct. 16, 2006, 120 Stat. 2027, Pub. L. 109-356, § 116(a).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 108-335 deleted the second and third sentences in the section which had read as follows: “The Auditor-Master shall give bond faithfully to discharge the duties of that office. The bond shall have two or more sureties to be approved by the chief judge of the Superior Court, and shall be in an amount prescribed by the chief judge.”

Pub. L. 109-356 made a technical correction to Pub. L. 108-335 that did not change the text of the section.

Effective Dates

Section 116(c) of Pub. L. 109-356 provides that the amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 [Pub. L. 108-335].

§ 11-1726. Compensation and benefits for court personnel.

(a) In the case of nonjudicial employees of the District of Columbia courts whose compensation is not otherwise fixed by this title, the Executive Officer shall fix the rates of

compensation of such employees without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code. Any rates so established shall be subject to the limitation on maximum pay in section 5382(a) of such title. In fixing the rates of compensation of nonjudicial employees under this section, the Executive Officer may be guided by the rates of compensation fixed for employees in the executive and judicial branches of the Federal Government or State or local governments occupying the same or similar positions or occupying positions of similar responsibility, duty, and difficulty.

(b)(1) Nonjudicial employees of the District of Columbia courts shall be treated as employees of the Federal Government solely for purposes of any of the following provisions of title 5, United States Code:

- (A) Subchapter 1 of chapter 81 (relating to compensation for work injuries).
- (B) Chapter 83 (relating to retirement).
- (C) Chapter 84 (relating to the Federal Employees' Retirement System).
- (D) Chapter 87 (relating to life insurance).
- (E) Chapter 89 (relating to health insurance).
- (F) Chapter 89A (relating to enhanced dental benefits).
- (G) Chapter 89B (relating to enhanced vision benefits).
- (H) Chapter 90 (relating to long-term care insurance).

(2) The employing agency shall make contributions under the provisions referred to paragraph (1) [of this subsection] at the same rates applicable to agencies of the Federal Government.

(3) An individual who is a nonjudicial employee of the District of Columbia courts on the date of the enactment of the Balanced Budget Act of 1997 [August 5, 1997] may make, within 60 days after such date, an election under section 8351 or section 8432 of title 5, United States Code, to participate in the Thrift Savings Plan for Federal employees.

(c)(1) Judicial employees of the District of Columbia courts shall be treated as employees of the Federal Government for purposes of any of the following provisions of title 5, United States Code:

- (A) Subchapter 1 of chapter 81 (relating to compensation for work injuries).
- (B) Chapter 87 (relating to life insurance).
- (C) Chapter 89 (relating to health insurance).
- (D) Chapter 89A (relating to enhanced dental benefits).
- (E) Chapter 89B (relating to enhanced vision benefits).
- (F) Chapter 90 (relating to long-term care insurance).

(2) The employing agency shall make contributions under the provisions referred to paragraph (1) [of this subsection] at the same rates applicable to agencies of the Federal Government.

(3) For purposes of section 8706(b) and section 8901(3)(B) of title 5, United States Code, benefits paid from the retirement system for judicial employees of the District of Columbia courts or from the system providing benefits to survivors of such employees shall be considered an annuity.

(4) For purposes of section 8901(3)(A) of title 5, United States Code, the retirement system for judicial employees of the District of Columbia courts shall be considered a retirement system for employees of the Government.

(July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; Aug. 5, 1997, 111 Stat. 755, Pub. L. 105-33, § 11246(b)(1); Feb. 20, 2003, 117 Stat. 129, Pub. L. 108-7, Div. C, title III, § 138(b); Oct. 16, 2006, 120 Stat. 2024, 2027, Pub. L. 109-356, §§ 112(a), 117(b).)

Historical and Statutory Notes

Effect of Amendments

Section 138 of Public Law 108-7 added subsecs. (b)(1)(F) and (c)(1)(D).

Pub. L. 109-356, in the second sentence of subsec. (a), substituted "maximum pay in section 5382(a)" for "pay fixed by administrative action in

section 5373"; in subsec. (b)(1), rewrote subpar. (F) and added subpars. (G) and (H); and, in subsec. (c)(1), rewrote subpar. (D) and added subpars. (E) and (F). Prior to amendment, subpar. (F) of subsec. (b)(1) and subpar. (D) of subsec. (c)(1) read as follows:

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“(F) Chapter 90 (relating to long-term care insurance).”

“(D) Chapter 90 (relating to long-term care insurance).”

Effective Dates

Section 112(b) of Pub. L. 109-356 provides that the amendment made by subsection (a) shall apply

with respect to pay periods beginning on or after the date of the enactment of this Act [October 16, 2006].

§ 11-1728. Recruitment and training of personnel and travel.

(a) The Executive Officer shall be responsible for recruiting such qualified personnel as may be necessary for the District of Columbia Courts and for providing in-service training for court personnel.

(b) Travel under Federal supply schedules is authorized for the travel of court personnel on official business. The joint committee shall prescribe such requirements, conditions and restrictions for such travel as it considers appropriate, and shall include policies and procedures for preventing abuses of that travel authority.

(July 29, 1970, 84 Stat. 512, Pub. L. 91-358, title I, § 111; Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 330.)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 108-335 rewrote the section which had read as follows:

“§ 11-1728. Recruitment and training of personnel.

“The Executive Officer shall be responsible for recruiting such qualified personnel as may be necessary for the District of Columbia courts and for providing in-service training for court personnel.”

§ 11-1729. Service of United States marshal.

Notes of Decisions

Actions under color of law 1
Authority of district 2

2008, 584 F.Supp.2d 83. Civil Rights ⇌ 1327;
Civil Rights ⇌ 1364

2. Authority of district

1. Actions under color of law

Former United States Marshal for Superior Court of District of Columbia was federal official not amenable to suit, under §§ 1983, as employee, servant, agent, or actor under control of District of Columbia, precluding female former arrestees' class action, claiming violations of Fourth and Fifth Amendments by marshal's strip searches of all female arrestees awaiting presentment to superior court judge, without reasonable and particularized suspicion that any female was carrying contraband on her person and without strip searching any male arrestees, since marshal was empowered to act under color of federal Anti-Drug Abuse Act, creating office of and providing authority to Superior Court Marshal, and District of Columbia law provided that marshal acted under supervision of United States Attorney General. *Johnson v. Government of District of Columbia*,

District of Columbia lacked authority to control conduct of former United States Marshal for Superior Court of District of Columbia, in conducting strip searches of all female arrestees awaiting presentment to superior court judge, without reasonable and particularized suspicion that any female was carrying contraband on her person and without strip searching any male arrestees, precluding female former arrestees' class action, under §§ 1983, claiming that District of Columbia violated Fourth and Fifth Amendments by acting in concert with marshal and entrusting arrestees to marshal's custody, since marshal was federal official in exclusive control of handling arrestees, marshal derived authority from federal Anti-Drug Act, not District of Columbia law, and District of Columbia lacked status of state and had no choice but to turn over arrestees to marshal pursuant to Anti-Drug Act. *Johnson v. Government of District of Columbia*, 2008, 584 F.Supp.2d 83. Civil Rights ⇌ 1364

§ 11-1732. Magistrate judges.

(a) With the approval of a majority of the judges of the Superior Court of the District of Columbia in active service and subject to standards and procedures established by the rules of the Superior Court, the chief judge of the Superior Court may appoint magistrate judges, who shall serve in the Superior Court and perform the duties enumerated in subsection (j) of

this section (or, in the case of magistrate judges for the Family Court or the Domestic Violence Unit of the Superior Court, the duties enumerated in section 11-1732A(d)) and such other functions incidental to these duties as are consistent with the rules of the Superior Court and the Constitution and laws of the United States and of the District of Columbia.

(b) Magistrate judges shall be selected pursuant to standards and procedures adopted by the Board of Judges. Such procedures shall contain provisions for public notice of all vacancies in magistrate judge positions and for the establishment by the Court of an advisory merit selection panel, composed of lawyer and nonlawyer residents of the District of Columbia who are not employees of the District of Columbia Courts, to assist the Board of Judges in identifying and recommending persons who are best qualified to fill such positions.

(c) Except as provided in section 11-1732A(b), no individual shall be appointed as a magistrate judge unless that individual —

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding the appointment or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or District government; and

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to appointment, and retains such residency during service as a magistrate judge, except that magistrate judges appointed prior to the effective date of this section shall not be required to be residents of the District to be eligible to be appointed to one of the initial terms under this section or to be reappointed.

(d) Magistrate judges shall be appointed for terms of four years and may be reappointed for terms of four years. Those individuals serving as magistrate judges on the effective date of this Act shall be automatically appointed for a four year term.

(e) Upon the expiration of a magistrate judge's term, the magistrate judge may continue to perform the duties of office until a successor is appointed, or for 90 days after the date of the expiration of the hearing commissioner's term, whichever is earlier.

(f) No individual may serve as a magistrate judge under this section after having attained the age of seventy-four.

(g) The Board of Judges may suspend, involuntarily retire, or remove a magistrate judge, during the term for which the magistrate judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability. Suspension, involuntary retirement, or removal requires the concurrence of a majority of the judges in active service. Before any order of suspension, involuntary retirement, or removal shall be entered, a full specification of the charges and the opportunity to be heard shall be furnished to the magistrate judge pursuant to procedures established by rules of the Superior Court.

(h) If the Board of Judges determines that a magistrate judge position is not needed, the Board of Judges may terminate the position.

(i)(1) Magistrate judges may not engage in the practice of law, or in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as officers of the court.

(2) Magistrate judges shall abide by the Canons of Judicial Ethics.

(j) A magistrate judge, when specifically designated by the chief judge of the Superior Court, and subject to the rules of the Superior Court and the right of review under subsection (k), may perform the following functions:

(1) Administer oaths and affirmations and take acknowledgements;

(2) Determine conditions of release pursuant to the provisions of Title 23 of the District of Columbia Official Code (relating to criminal procedure);

(3) Conduct preliminary examinations and initial probation revocation hearings in all criminal cases to determine if there is probable cause to believe that an offense has been committed and that the accused committed it;

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(4)(A) In any case brought under § 11-1101(1), (3), (10), or (11) of the District of Columbia Official Code involving the establishment or enforcement of child support, or in any case seeking to modify an existing child support order, where a magistrate judge in the Family Division of the Superior Court finds that there is an existing duty of support, the magistrate judge shall conduct a hearing on support, make findings, and enter judgment as provided by law, and in accordance with guidelines established by rule of the Superior Court, which judgment shall constitute a final order of the Superior Court.

(B) If in a case under paragraphs [paragraph] (A), the magistrate judge finds that a duty of support exists and makes a finding that the case involves complex issues requiring judicial resolution, the magistrate judge shall establish a temporary support obligation and refer unresolved issues to a judge of the Superior Court.

(C) In cases under subparagraphs (A) and (B) in which the magistrate judge finds that there is a duty of support and the individual owing that duty has been served or given notice of the proceeding under any applicable statute or court rule, if that individual fails to appear or otherwise respond, the magistrate judge shall enter a default order, which shall constitute a final order of the Superior Court;

(5) Subject to the rules of the Superior Court and with the consent of the parties involved, make findings and enter final orders or judgments in other uncontested or contested proceedings, in the Civil, Criminal, and Family Divisions of the Superior Court, excluding jury trials and trials of felony cases.

(k) With respect to proceedings and hearings under paragraphs (2), (3), (4), and (5) of subsection (j) (or proceedings and hearings under section 11-1732A(d), in the case of magistrate judges for the Family Court or the Domestic Violence Unit of the Superior Court), a review of the magistrate judge's order or judgment, in whole or in part, may be made by a judge of the appropriate division (or, in the case of an order or judgment of a magistrate judge of the Family Court or the Domestic Violence Unit of the Superior Court, by a judge of the Family Court or the Domestic Violence Unit) sua sponte and must be made upon a motion of one of the parties made pursuant to procedures established by rules of the Superior Court. The reviewing judge shall conduct such proceedings as required by the rules of the Superior Court. An appeal to the District of Columbia Court of Appeals may be made only after a judge of the Superior Court has reviewed the order or judgment.

(l) The Superior Court shall ensure that all magistrate judges receive training to enable them to fulfill their responsibilities (subject to the requirements of section 11-1732A(f) in the case of magistrate judges of the Family Court of the Superior Court or the Domestic Violence Unit).

(m)(1) The chief judge of the Superior Court, in consultation with the District of Columbia Bar, the City Council of the District of Columbia, and other interested parties, shall within one year of the effective date of this section, make a careful study of conditions in the Superior Court to determine —

(A) the number of appointments required to provide for the effective administration of justice;

(B) the divisions in which hearing commissioners shall serve;

(C) the appropriate functions of hearing commissioners; and

(D) the compensation of, and other personnel matters pertaining to, hearing commissioners.

Upon completion of the study, the chief judge shall report the findings of such study to the appropriate committees of the Congress.

(2) After the study required by paragraph (1), the chief judge shall, from time to time, make such studies as the Board of Judges shall deem expedient, giving consideration to suggestions of the District of Columbia Bar and other interested parties.

(n) With the concurrence of the District of Columbia Court of Appeals, the Board of Judges of the Superior Court may promulgate rules, not inconsistent with the terms of this section, which are necessary for the fair and effective utilization of magistrate judges in the Superior Court.

(o) For purposes of this section, the term “Board of Judges” means the judges of the Superior Court of the District of Columbia. Any action of the Board of Judges shall require a majority vote of the sitting judges.

(Sept. 10, 1982, 96 Stat. 818, Pub. L. 97-257; July 29, 1983, 97 Stat. 301, Pub. L. 98-63, § 2; Oct. 12, 1984, 98 Stat. 1837, Pub. L. 98-473, § 101(b); Dec. 19, 1985, 99 Stat. 1224, Pub. L. 99-190, § 101(c); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 2(a); Jan. 8, 2002, 115 Stat. 2112, Pub. L. 107-114, §§ 5(a)(1), 6(b).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 107-114 substituted “Magistrate judges” for “Hearing commissioners” in the section heading; substituted “magistrate judges” for “hearing commissioners” in subsecs. (a), (b), (d), (i), (l), and (n); substituted “magistrate judge” for “hearing commissioner” in subsecs. (b), (c), (e), (f), (g), (h), and (j); substituted “magistrate judge’s” for “hearing commissioner’s” in subsecs. (e) and (k); substituted “Magistrate judges” for “Hearing commissioners” in subsecs. (b), (d), and (i); in subsec. (a), inserted “(or, in the case of magistrate judges for the Family Court or the Domestic Violence Unit of the Superior Court, the duties enumerated in section 11-1732A(d))” after “the duties enumerated in subsection (j) of this section”; in subsec. (c), substituted “Except as provided in section 11-1732A(b), no individual” for “No individual”; in subsec. (k), substituted “subsection (j) (or proceedings and hearings under section 11-1732A(d), in the case of magistrate judges for the Family Court or the Domestic Violence Unit of the Superior Court),” for “subsection (j).”, and inserted “(or, in the case of an order or judgment of a magistrate judge of the Family Court or the Domestic Violence Unit of the Superior Court, by a judge of the Family Court or the Domestic Violence Unit)” after “appropriate division”; and, in subsec. (l), inserted “(subject to the requirements of section 11-1732A(f) in the case of magistrate judges of the Family Court of the Superior Court or the Domestic Violence Unit)” after “responsibilities”.

Miscellaneous Notes

Section 5(b) of Pub. L. 107-114 provides:

“(b) **TRANSITION PROVISION REGARDING HEARING COMMISSIONERS.**—Any individual serving as a hearing commissioner under section 11-1732 of the District of Columbia Code as of the date of the enactment of this Act [Jan. 8, 2002] shall serve the remainder of such individual’s term as a magistrate judge, and may be reappointed as a magistrate judge in accordance with section 11-1732(d), District of Columbia Code, except that any individual serving as a hearing commissioner as of the date of the enactment of this Act who was appointed as a hearing commissioner

prior to the effective date of section 11-1732 of the District of Columbia Code shall not be required to be a resident of the District of Columbia to be eligible to be reappointed.”

Section 6(d)(2) of Pub. L. 107-114 provides:

“**EXPEDITED INITIAL APPOINTMENTS.**—

“(A) **IN GENERAL.**—Not later than 60 days after the date of enactment of this Act [Jan. 8, 2002], the chief judge of the Superior Court of the District of Columbia shall appoint individuals to serve as magistrate judges for the Family Division of the Superior Court in accordance with the requirements of sections 11-1732 and 11-1732A, District of Columbia Code (as added by subsection (a)), for the purpose of assisting with the implementation of the transition plan under section 3(b) of this Act, and in particular with the transition or disposal of actions or proceedings pursuant to section 3(b)(2) of this Act.

“(B) **TRANSITION RESPONSIBILITIES OF INITIALLY APPOINTED FAMILY COURT MAGISTRATES.**—The chief judge of the Superior Court and the presiding judge of the Family Division of the Superior Court (acting jointly) shall first assign the magistrate judges of Family Court appointed under this paragraph to work with judges to whom the cases are currently assigned in making case disposition or transfer decisions as follows:

“(i) The action or proceeding involves an allegation of abuse or neglect.

“(ii) The judge to whom the action or proceeding is assigned as of the date of enactment of this Act is not assigned to the Family Division.

“(iii) The action or proceeding was initiated in the Family Division prior to the 2-year period which ends on the date of enactment of this Act.

“(C) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed to preclude magistrate judges appointed pursuant to this subsection from performing upon appointment any or all of the functions of magistrate judges of the Family Court or Domestic Violence Unit as set forth in subsection 11-1732A(d).”

Notes of Decisions

Pretrial release conditions 4.5

4.5. Pretrial release conditions

Superior Court magistrate judges fell within definition of “judicial officer” as that term was used in

statute permitting “judicial officers” to set conditions of pretrial release; another statute expressly authorized magistrate judges to determine conditions of release. *Vest v. U.S.*, 2003, 834 A.2d 908. Bail ⇐ 42.5

§ 11-1732A

ORGANIZATION AND JURISDICTION OF THE COURTS

§ 11-1732A. Special rules for magistrate judges of the Family Court of the Superior Court and the Domestic Violence Unit.

(a) *Use of social workers in advisory merit selection panel.* — The advisory selection merit panel used in the selection of magistrate judges for the Family Court of the Superior Court under section 11-1732(b) shall include certified social workers specializing in child welfare matters who are residents of the District and who are not employees of the District of Columbia Courts.

(b) *Special qualifications.* — Notwithstanding section 11-1732(c), no individual shall be appointed or assigned as a magistrate judge for the Family Court of the Superior Court or as a magistrate judge for the Domestic Violence Unit handling actions or proceedings which would otherwise be under the jurisdiction of the Family Court unless that individual —

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar;

(3) for the 5 years immediately preceding the appointment has been engaged in the active practice of law in the District, has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or District government, or any combination thereof;

(4) has not fewer than 3 years of training or experience in the practice of family law as a lawyer or judicial officer; and

(5)(A) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least 90 days immediately prior to appointment, and retains such residency during service as a magistrate judge; or

(B) is a bona fide resident of the areas consisting of Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties, and the City of Alexandria in Virginia, has maintained an actual place of abode in such area, areas, or the District of Columbia for at least 5 years prior to appointment, and certifies that the individual will become a bona fide resident of the District of Columbia not later than 90 days after appointment.

(c) *Service of current hearing commissioners.* — Those individuals serving as hearing commissioners under section 11-1732 on the effective date of this section who meet the qualifications described in subsection (b)(4) may request to be appointed as magistrate judges for the Family Court of the Superior Court under such section.

(d) *Functions of family court and domestic violence unit magistrates.* — A magistrate judge, when specifically designated by the chief judge in consultation with the appropriate presiding judge to serve in the Family Court or in the Domestic Violence Unit and subject to the rules of the Superior Court and the right of review under section 11-1732(k), may perform the following functions:

(1) Administer oaths and affirmations and take acknowledgements.

(2) Subject to the rules of the Superior Court and applicable Federal and District of Columbia law, conduct hearings, make findings and enter interim and final orders or judgments in uncontested or contested proceedings within the jurisdiction of the Family Court and the Domestic Violence Unit of the Superior Court (as described in section 11-1101), excluding jury trials and trials of felony cases, as assigned by the appropriate presiding judge.

(3) Subject to the rules of the Superior Court, enter an order punishing an individual for contempt, except that no individual may be detained pursuant to the authority of this paragraph for longer than 180 days.

(e) *Location of proceedings.* — To the maximum extent feasible, safe, and practicable, magistrate judges of the Family Court of the Superior Court shall conduct proceedings at locations readily accessible to the parties involved.

(f) *Training.* — The chief judge, in consultation with the presiding judge of the Family Court of the Superior Court, shall ensure that all magistrate judges of the Family Court

receive training to enable them to fulfill their responsibilities, including specialized training in family law and related matters.

(Jan. 8, 2002, 115 Stat. 2113, Pub. L. 107-114, § 6(a).)

SUBCHAPTER III. DUTIES AND RESPONSIBILITIES.

§ 11-1742a. Multiyear contracting authority and leasing agreements.

(a) *Severable services contracts for periods crossing fiscal years.* — The Executive Officer may enter into a contract for procurement of severable services in the same manner and to the same extent as the head of an executive agency may enter into such a contract under section 303L of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253l).

(b) *Multiyear leasing agreements.* —

(1) *Authority.* — The Executive Officer may enter into a lease agreement for the accommodation of the District of Columbia courts in a building which is in existence or being erected by the lessor to accommodate the District of Columbia courts.

(2) *Terms.* — A lease agreement under this subsection shall be on terms the Executive Officer considers to be in the interest of the Federal Government and the District of Columbia and necessary for the accommodation of the District of Columbia courts. However, the lease agreement may not bind the District of Columbia courts for more than 10 years and the obligation of amounts for a lease under this subsection is limited to the current fiscal year for which payments are due without regard to section 1341(a)(1)(B) of title 31, United States Code.

(c) *Multiyear contracts.* —

(1) *Authority.* — The Executive Officer may enter into a multiyear contract for the acquisition of property or services in the same manner and to the same extent as an executive agency may enter into such a contract under section 304B of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c). In applying such authority —

(A) in section 304B(a)(2)(B) —

(i) “the best interests of the District of Columbia and the Federal Government” shall be substituted for “the best interests of the United States”; and

(ii) “the courts’ programs” shall be substituted for “the agency’s programs”;

(B) the second sentence of section 304B(b), and subsection (e), shall not apply; and

(C) in section 304B(c), “\$5,000,000” shall be substituted for “\$10,000,000”.

(2) *Cancellation or termination for insufficient funding after first year.* — In the event that funds are not made available for the continuation of a multiyear contract for services into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from —

(A) appropriations originally available for the performance of the contract concerned;

(B) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(C) funds appropriated for those payments.

(Oct. 30, 2004, 118 Stat. 2229, Pub. L. 108-386, § 3.)

Historical and Statutory Notes

Effective Dates

Section 9 of Pub. L. 108-386, 118 Stat. 2228, the 2004 District of Columbia Omnibus Authorization

Act, provides that: “The amendments made by this section shall take effect on the date of the enactment of this Act.”

Chapter 19

Juries and Jurors.

Section

- 11-1901. Declaration of policy.
- 11-1903. Prohibition of discrimination.
- 11-1906. Qualification of jurors.
- 11-1908. Exclusion from jury service.

Section

- 11-1910. Challenging compliance with selection procedures.
- 11-1914. Preservation of records.
- 11-1916. Grand jury; additional grand jury.

United States Supreme Court

Peremptory challenges,

Race discrimination,

Equal protection, purposeful discrimination in jury selection, state prisoners, denial of habeas corpus relief, certificate of appealability, debatable question among reasonable jurors, see *Miller-El v. Cockrell*, 2003, 123 S.Ct. 1029, 537 U.S. 322, 154 L.Ed.2d 931, on remand 361 F.3d 849.

Right to jury trial,

In general,

Habeas corpus, successive petitions, new rule of constitutional law made retroactive to cases on collateral review, jury instructions allowing conviction without proof beyond a reasonable doubt, see *Tyler v. Cain*, 2001, 121 S.Ct. 2478, 533 U.S. 656, 150 L.Ed.2d 632, rehearing denied 122 S.Ct. 13, 533 U.S. 970, 150 L.Ed.2d 795.

§ 11-1901. Declaration of policy.

Notes of Decisions

In general 1.2

Construction with federal law 1.5

Judicial notice 4.1

Presumptions and burden of proof 4.3

Subpoenas 4.6

1.2. *In general*

Under the District of Columbia Jury System Act (DCJSA), doubtful cases are to be resolved in the defendant's favor, with respect to access to discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment. *Gause v. U.S.*, 2008, 959 A.2d 671, opinion vacated in part on rehearing en banc 968 A.2d 1032, on rehearing 6 A.3d 1247. Criminal Law ⇌ 627.6(6)

1.5. *Construction with federal law*

Court of Appeals would not construe omission of sentence in District of Columbia Jury System Act (DCJSA) that was present in federal Jury Selection and Service Act (FJSSA), which was predecessor to DCJSA, stating that parties in a case "shall be allowed to inspect, reproduce, and copy such records or papers [relevant to a motion] at all reasonable times during the preparation and pendency of such a motion," so as to require satisfaction of threshold showing that movant for discovery under DCJSA had objective grounds from other sources to believe, or at least suspect, that court records would yield affirmative evidence of substantial failure to comply with DCJSA; Court would not presume Congress intended to remove rights by implication, and such qualification of

right did not exist in FJSSA. *Gause v. U.S.*, 2010, 6 A.3d 1247. Criminal Law ⇌ 627.6(6)

2. *Fair cross section of the community*

The impaneling of a fair and impartial jury is the task of the trial judge. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Jury ⇌ 83(1)

4. *Challenges to jurors*

In escape prosecution, trial judge did not abuse its discretion in rejecting defense counsel's request that, during individual interviews with each prospective juror during voir dire, judge ask question to jury concerning whether they or persons close to them have been accused of, victim of, or a witness to any crime without permitting juror to make determination on whether such experience affected juror's ability to be fair and impartial; while it might have been appropriate to inquire to the prospective jurors' experience with the underlying offense, no such question was requested, and defense counsel was given full opportunity to ask any follow-up questions that counsel wished to explore. *Mills v. U.S.*, 2002, 796 A.2d 26. Jury ⇌ 131(15.1)

The trial court, during voir dire, is under no obligation to inquire as to the jurors' experience with crimes of any type. *Mills v. U.S.*, 2002, 796 A.2d 26. Jury ⇌ 131(1)

Although Federal Constitution guarantees only fair and impartial jury, free from actual bias or prejudice, juror's impartiality may not be assumed without inquiry, and proper occasion for such determination is upon voir dire examination. *Lewis v. Voss*, 2001, 770 A.2d 996. Jury ⇌ 33(2.10); Jury ⇌ 131(6)

Trial judge erred in accepting juror's ambiguous claim that she could be impartial for purposes of personal injury action brought by injured motorist; juror signaled doubts as to whether she could be fair and impartial, particularly based upon her reading of a book concerning frivolous lawsuits and her "very unpleasant" experience as a defendant in a lawsuit, juror held views as to how tort system might benefit from overhaul, and judge asked no additional questions to make certain that she would not sit as a partial juror. *Lewis v. Voss*, 2001, 770 A.2d 996. Jury ⇨ 97(1); Jury ⇨ 105(1)

Defendant had a Sixth Amendment right during voir dire to pose follow-up questions to prospective jurors who had close friends or family members in the law enforcement field; the court's questions did not explore the relationship between the identified law enforcement person and the prospective juror, and the testimony of police officers and government experts played a substantial role in the case. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Jury ⇨ 33(4); Jury ⇨ 131(6)

The trial court has broad discretion in conducting voir dire examination. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Jury ⇨ 131(2)

A potential juror's bias may be implied or presumed as a matter of law, as in the case of a potential juror who is related to a party in the case or may be inferred when a juror discloses a fact that bespeaks a risk of partiality sufficiently significant, such as a relationship with a prosecutor, to warrant granting the trial judge discretion to excuse the juror for cause, but not so great as to make mandatory a presumption of bias. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Jury ⇨ 90; Jury ⇨ 91; Jury ⇨ 97(1)

A court is allowed to dismiss a juror on the ground of inferable bias only after having received responses from the juror that permit an inference that the juror in question would not be able to decide the matter objectively; in other words, the judge's determination must be grounded in facts developed at voir dire. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Jury ⇨ 97(1)

To be meaningful, voir dire, whether in a capital case or in the more usual situation, must uncover more than the jurors' bottom line conclusions to broad questions which do not in themselves reveal automatically disqualifying biases as to their ability fairly and accurately to decide the case, and indeed, which do not elucidate the bases for those conclusions. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Jury ⇨ 131(4)

Where potential jurors remain silent during voir dire in response to a general question regarding their ability to be fair and impartial despite their family or close relationships with persons in the law enforcement field, the trial judge has an obligation to probe further and to elicit more than a

nod of the head or a simple "yes" or "no" response to ensure their impartiality and fairness as jurors. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Jury ⇨ 131(4)

4.1. Judicial notice

District of Columbia Court of Appeals would take judicial notice that, in prior 12-month period, the criminal caseload in the District of Columbia Superior Court was substantially greater than that of a United States District Court, when the Court of Appeals was determining whether the standard, under the District of Columbia Jury System Act (DCJSA), for a defendant to obtain discovery of non-public jury information before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, differs from the standard under the Federal Jury Selection and Service Act (FJSSA). *Gause v. U.S.*, 2008, 959 A.2d 671, opinion vacated in part on rehearing en banc 968 A.2d 1032, on rehearing 6 A.3d 1247. Criminal Law ⇨ 304(13)

4.3. Presumptions and burden of proof

Under the District of Columbia Jury System Act (DCJSA), to obtain discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, a defendant must make a particularized showing supporting a reasonable belief that underrepresentation in the jury pool or the venire exists as the result of practices of systematic exclusion. *Gause v. U.S.*, 2008, 959 A.2d 671, opinion vacated in part on rehearing en banc 968 A.2d 1032, on rehearing 6 A.3d 1247. Criminal Law ⇨ 627.6(6)

4.6. Subpoenas

Evidence was sufficient to establish, at hearing on defendants' motions for new trials, that prosecutor's abuse of grand jury subpoena power by serving eyewitness with multiple subpoenas, conducting at least five interviews with witness before presenting witness to grand jury and paying witness fees each day witness came to prosecutor's office, did not lead to the subornation of perjured testimony at defendants' trial, in prosecution of defendants arising out of beating of homeless man and murder and assaults of passersby; though at trial witness testified reluctantly after being confronted with his grand jury testimony and witness subsequently recanted his testimony, witness's grand jury testimony did not simply parrot what other witnesses had said, grand jury testimony had key indicia of truthfulness, and there was evidence that witness's blanket recantation was not credible and that defendants had intimidated other witnesses. *Perez v. U.S.*, 2009, 968 A.2d 39, certiorari denied 130 S.Ct. 473, 175 L.Ed.2d 317, certiorari denied 130 S.Ct. 474, 175 L.Ed.2d 317. Grand Jury ⇨ 34; Grand Jury ⇨ 36.4(2)

§ 11-1901

Note 5

5. Review

Trial court's decision to accept juror's ambiguous claim that she could be impartial despite her very unpleasant experience as a defendant in a lawsuit, and her attitudes toward tort reform and plaintiffs, did not constitute harmless error for purposes of personal injury action brought by injured motorist; court's decision resulted in substantial prejudice to motorist who had only three peremptory challenges, all of which were used, and damages verdict rendered by the jury was less than the actual medical expenses and lost wages that were uncontested at trial. *Lewis v. Voss*, 2001, 770 A.2d 996. Federal Courts ⇨ 1066; Jury ⇨ 97(1); Jury ⇨ 105(1)

Absent an abuse of discretion during voir dire and substantial prejudice to the accused, the trial court will be upheld. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Criminal Law ⇨ 1166.16

A harmless error standard applies to cases challenging the voir dire due to the refusal of the trial court to permit follow-up questions designed to weed out juror bias. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Criminal Law ⇨ 1166.16

Erroneous refusal to permit the defendant during voir dire to pose follow-up questions to prospective jurors who had close friends or family members in the law enforcement field was harmless in prosecution for murder and drug offenses; the case depended heavily on the testimony of civilian witnesses, rather than that of law enforcement officers, and even if a juror with close friends working for the Department of Justice and the Parole Commission was biased in favor of law enforcement officers, that bias would not have affected jury deliberations and the verdict in light of the testimony by participants in the drug operation. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Criminal Law ⇨ 1166.16

ORGANIZATION AND JURISDICTION OF THE COURTS

§ 11-1903. Prohibition of discrimination.

Notes of Decisions

Judicial notice 4

Presumptions and burden of proof 5

1. In general

The Superior Court of the District of Columbia in a grand jury proceeding has the same subpoena power as a federal district court. *Perez v. U.S.*, 2009, 968 A.2d 39, certiorari denied 130 S.Ct. 473, 175 L.Ed.2d 317, certiorari denied 130 S.Ct. 474, 175 L.Ed.2d 317. Grand Jury ⇨ 36.4(1)

Under the District of Columbia Jury System Act (DCJSA), doubtful cases are to be resolved in the defendant's favor, with respect to access to discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment. *Gause v. U.S.*, 2008, 959 A.2d 671, opinion vacated in part on rehearing en banc 968 A.2d 1032, on rehearing 6 A.3d 1247. Criminal Law ⇨ 627.6(6)

4. Judicial notice

District of Columbia Court of Appeals would take judicial notice that, in prior 12-month period, the criminal caseload in the District of Columbia Superior Court was substantially greater than that of a United States District Court, when the Court

of Appeals was determining whether the standard, under the District of Columbia Jury System Act (DCJSA), for a defendant to obtain discovery of non-public jury information before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, differs from the standard under the Federal Jury Selection and Service Act (FJSSA). *Gause v. U.S.*, 2008, 959 A.2d 671, opinion vacated in part on rehearing en banc 968 A.2d 1032, on rehearing 6 A.3d 1247. Criminal Law ⇨ 304(13)

5. Presumptions and burden of proof

Under the District of Columbia Jury System Act (DCJSA), to obtain discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, a defendant must make a particularized showing supporting a reasonable belief that underrepresentation in the jury pool or the venire exists as the result of practices of systematic exclusion. *Gause v. U.S.*, 2008, 959 A.2d 671, opinion vacated in part on rehearing en banc 968 A.2d 1032, on rehearing 6 A.3d 1247. Criminal Law ⇨ 627.6(6)

§ 11-1906. Qualification of jurors.

Notes of Decisions

2. Felons and ex-felons

The trial court, during voir dire, is under no obligation to inquire as to the jurors' experience with crimes of any type. *Mills v. U.S.*, 2002, 796 A.2d 26. Jury ⇨ 131(1)

In escape prosecution, trial judge did not abuse its discretion in rejecting defense counsel's request that, during individual interviews with each prospective juror during voir dire, judge ask question to jury concerning whether they or persons close to them have been accused of, victim of, or a

witness to any crime without permitting juror to make determination on whether such experience affected juror's ability to be fair and impartial; while it might have been appropriate to inquire to the prospective jurors' experience with the under-

lying offense, no such question was requested, and defense counsel was given full opportunity to ask any follow-up questions that counsel wished to explore. *Mills v. U.S.*, 2002, 796 A.2d 26. *Jury* ⇨ 131(15.1)

§ 11-1908. Exclusion from jury service.

Notes of Decisions

In general 1
Immunity 2

1. In general

Trial court acted within its discretion, in store patron's action against police officer for assault and battery and false arrest and against store for negligent hiring, training, and supervision after he was stopped on suspicion of shoplifting but released without charge, in excusing for cause juror who admitted that she would probably identify or sympathize with patron if he was suffering from depression as he claimed, juror who reported past issue with anger management and whose demeanor at bench struck defense counsel and judge as disturbing, and juror who preferred not to endure jury deliberations that might upset her medical condition, for which she was taking psychotropic drugs. *Steele v. D.C. Tiger Market*, 2004, 854 A.2d 175. *Jury* ⇨ 83(1); *Jury* ⇨ 97(1)

A trial judge has broad discretion in deciding whether to excuse a juror for cause to achieve goal of selecting jurors who would be able to fulfill their responsibilities. *Steele v. D.C. Tiger Market*, 2004, 854 A.2d 175. *Jury* ⇨ 85

Store patron was not substantially prejudiced, in his action against police officer for assault and battery and false arrest and against store for

negligent hiring, training, and supervision after he was stopped on suspicion of shoplifting but released without charge, by trial court's removal for cause of juror who admitted that she would probably identify or sympathize with patron if he was suffering from depression as he claimed, juror who reported past issue with anger management and whose demeanor at bench struck defense counsel and judge as disturbing, and juror who preferred not to endure jury deliberations that might upset her medical condition, for which she was taking psychotropic drugs. *Steele v. D.C. Tiger Market*, 2004, 854 A.2d 175. *Federal Courts* ⇨ 1066

2. Immunity

Assistant United States Attorney (AUSA) and juror officer were entitled to qualified immunity for their conduct in removing grand juror from a grand jury serving in District of Columbia, based on complaints from other grand jurors, in pro se civil rights action brought by removed grand juror; no case law demonstrated that the removal of the grand juror would violate his constitutional rights, and District of Columbia statute authorized removal of jurors on basis that jurors' service would be likely to disrupt the proceedings, so that the alleged violation of juror's rights was not clearly established. *Atherton v. District of Columbia Office of the Mayor*, 2011, 813 F.Supp.2d 78. *Civil Rights* ⇨ 1376(8); *Civil Rights* ⇨ 1376(9)

§ 11-1910. Challenging compliance with selection procedures.

Notes of Decisions

Judicial notice 2
Presumptions and burden of proof 3

1. In general

Under the District of Columbia Jury System Act (DCJSA), doubtful cases are to be resolved in the defendant's favor, with respect to access to discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment. *Gause v. U.S.*, 2008, 959 A.2d 671, opinion vacated in part on rehearing en banc 968 A.2d 1032, on rehearing 6 A.3d 1247. *Criminal Law* ⇨ 627.6(6)

2. Judicial notice

District of Columbia Court of Appeals would take judicial notice that, in prior 12-month period, the criminal caseload in the District of Columbia

Superior Court was substantially greater than that of a United States District Court, when the Court of Appeals was determining whether the standard, under the District of Columbia Jury System Act (DCJSA), for a defendant to obtain discovery of non-public jury information before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, differs from the standard under the Federal Jury Selection and Service Act (FJSSA). *Gause v. U.S.*, 2008, 959 A.2d 671, opinion vacated in part on rehearing en banc 968 A.2d 1032, on rehearing 6 A.3d 1247. *Criminal Law* ⇨ 304(13)

3. Presumptions and burden of proof

Under the District of Columbia Jury System Act (DCJSA), to obtain discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or

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Note 3

the Sixth Amendment, a defendant must make a particularized showing supporting a reasonable belief that underrepresentation in the jury pool or the venire exits as the result of practices of sys-

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tematic exclusion. *Gause v. U.S.*, 2008, 959 A.2d 671, opinion vacated in part on rehearing en banc 968 A.2d 1032, on rehearing 6 A.3d 1247. Criminal Law ⇨ 627.6(6)

§ 11–1914. Preservation of records.

Notes of Decisions

In general ½

Discovery 3

Judicial notice 1

Presumptions and burden of proof 2

½. In general

Under the District of Columbia Jury System Act (DCJSA), doubtful cases are to be resolved in the defendant's favor, with respect to access to discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment. *Gause v. U.S.*, 2008, 959 A.2d 671, opinion vacated in part on rehearing en banc 968 A.2d 1032, on rehearing 6 A.3d 1247. Criminal Law ⇨ 627.6(6)

1. Judicial notice

District of Columbia Court of Appeals would take judicial notice that, in prior 12-month period, the criminal caseload in the District of Columbia Superior Court was substantially greater than that of a United States District Court, when the Court of Appeals was determining whether the standard, under the District of Columbia Jury System Act (DCJSA), for a defendant to obtain discovery of non-public jury information before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, differs from the standard under the Federal Jury Selection and Service Act (FJSSA). *Gause v. U.S.*, 2008, 959 A.2d 671, opinion vacated in part on rehearing en banc 968 A.2d 1032, on rehearing 6 A.3d 1247. Criminal Law ⇨ 304(13)

2. Presumptions and burden of proof

Under the District of Columbia Jury System Act (DCJSA), to obtain discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or

venire, as would violate the Due Process Clause or the Sixth Amendment, a defendant must make a particularized showing supporting a reasonable belief that underrepresentation in the jury pool or the venire exits as the result of practices of systematic exclusion. *Gause v. U.S.*, 2008, 959 A.2d 671, opinion vacated in part on rehearing en banc 968 A.2d 1032, on rehearing 6 A.3d 1247. Criminal Law ⇨ 627.6(6)

3. Discovery

Court of Appeals would not construe omission of sentence in District of Columbia Jury System Act (DCJSA) that was present in federal Jury Selection and Service Act (FJSSA), which was predecessor to DCJSA, stating that parties in a case “shall be allowed to inspect, reproduce, and copy such records or papers [relevant to a motion] at all reasonable times during the preparation and pendency of such a motion,” so as to require satisfaction of threshold showing that movant for discovery under DCJSA had objective grounds from other sources to believe, or at least suspect, that court records would yield affirmative evidence of substantial failure to comply with DCJSA; Court would not presume Congress intended to remove rights by implication, and such qualification of right did not exist in FJSSA. *Gause v. U.S.*, 2010, 6 A.3d 1247. Criminal Law ⇨ 627.6(6)

A litigant preparing a possible motion challenging the jury selection process under the District of Columbia Jury System Act (DCJSA) may inspect certain materials that are used in connection with the jury selection process without a threshold showing that there is reason to believe such discovery will ultimately substantiate a statutory or constitutional violation; the only qualification is that the litigant's request must be in connection with the preparation or presentation of such a motion. *Gause v. U.S.*, 2010, 6 A.3d 1247. Criminal Law ⇨ 627.6(1)

§ 11–1916. Grand jury; additional grand jury.

Notes of Decisions

2. In general

A defendant cannot be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him. *Zacarias v. U.S.*, 2005, 884 A.2d 83. Indictment And Information ⇨ 164

A grand jury may compel the production of evidence or the testimony of witnesses as it considers appropriate, and its operation generally is un-

restrained by the technical procedural and evidentiary rules governing the conduct of criminal trials. *Williams v. U.S.*, 2000, 757 A.2d 100. Grand Jury ⇨ 36.4(1)

4. Validity of indictments returned

Dismissal of an indictment on the ground of allegedly perjured grand jury testimony, as an exercise of the court's supervisory authority, is a narrow exception to the rule that an indictment

returned by a legally constituted and unbiased grand jury that is valid on its face is enough to call for a trial on the merits. *Jones v. U.S.*, 2006, 893 A.2d 564. Indictment And Information ⇨ 144.1(2)

Where false material testimony was presented to the grand jury, dismissal of an indictment is warranted only where it is established that the false testimony substantially influenced the grand jury's decision to indict, or where there exists a grave

doubt whether that decision was free from the substantial influence of the false testimony. *Jones v. U.S.*, 2006, 893 A.2d 564. Indictment And Information ⇨ 144.1(2)

As a general matter, a trial court may not dismiss an indictment for errors in grand jury proceedings unless such errors prejudiced the defendants. *Williams v. U.S.*, 2000, 757 A.2d 100. Indictment And Information ⇨ 144.1(2)

Chapter 21

Register of Wills.

Section

11-2102. Appointment; oath; qualifications; compensation.

Section

11-2104. Powers and duties; restrictions.

§ 11-2102. Appointment; oath; qualifications; compensation.

(a) The Superior Court shall appoint and remove the Register of Wills. The Register of Wills shall —

- (1) take an oath for the faithful and impartial discharge of the duties of the office; and
- (2) seasonably record (A) the decrees and orders of the court in any matters over which the court exercises probate jurisdiction or powers, (B) all wills proved before the Register of Wills or the court, and (C) all other matters directed to be recorded in the court or in the office.

(b) A person may not be appointed the Register of Wills for the District of Columbia unless that person —

- (1) is a citizen of the United States;
- (2) has been a member of the bar of the District of Columbia for a period of at least five of the ten years immediately before appointment; and
- (3) has been actively engaged in the practice of probate law in the District of Columbia or otherwise has broad experience in, or knowledge on the subject of, the administration of the estates of deceased persons in the District of Columbia.

(c) The compensation of the Register of Wills shall be fixed by the Superior Court without regard to chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code but at a rate not to exceed the maximum rate prescribed for GS-16 of the General Schedule. (July 29, 1970, 84 Stat. 516, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(96), (97), 108 Stat. 713; Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 329; Oct. 16, 2006, 120 Stat. 2027, Pub. L. 109-356, § 116(a).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 108-335 repealed subsec. (a)(2) which had read as follows:

"(2) give bond, with two or more sureties, to be approved by the chief judge of the Superior Court, in the amount designated by the court, faithfully to discharge the duties of the office, and seasonably to record (A) the decrees and orders of the court in any matters over which the court exercises probate jurisdiction or powers, (B) all wills proved before the Register of Wills or the court, and (C) all other matters directed to be recorded in the court or in the office."

Pub. L. 109-356 made a technical correction to Pub. L. 108-335 that deleted "bond ;" from the

section heading, substituted "seasonably record" for "give bond, with two or more sureties, to be approved by the chief judge of the Superior Court, in the amount designated by the court, faithfully to discharge the duties of the office, and seasonably to record" in subsec. (a)(2), and deleted the third sentence of subsec. (a) which read as follows: "The bond shall be entered in full upon the minutes of the Superior Court and the original filed with the records of the Superior Court."

Effective Dates

Section 116(c) of Pub. L. 109-356 provides that the amendments made by this section shall take effect as if included in the enactment of the Dis-

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trict of Columbia Appropriations Act, 2005 [Pub. L. 108-335].

§ 11-2104. Powers and duties; restrictions.

(a) The Register of Wills may —

- (1) receive inventories and accounts of sales, examine vouchers, and state accounts of executors, administrators, collectors, and guardians, subject to final approval of the court;
- (2) take the probate of claims against the estates of deceased persons that are properly brought before the Register of Wills, and approve or reject claims not exceeding \$300;
- (3) take the probate of wills and accept the bonds of executors, administrators, collectors, and guardians, subject to approval of the court; and
- (4) audit and state fiduciary accounts.

(b) In matters over which the Superior Court has probate jurisdiction or powers, the Register of Wills shall—

- (1) make full and fair entries, in separate records, of the proceedings of the court;
- (2) record in electronic or other format all wills proved before the Register of Wills or the court and other matters required by law to be recorded in the court;
- (3) lodge in places of safety designated by the court original papers filed with the Register of Wills;
- (4) make out and issue every summons, process, and order of the court;
- (5) prepare and submit to the Executive Officer of the District of Columbia courts such reports as may be required; and
- (6) in every respect, act under the control and direction of the court.

(c) The Register of Wills may not —

- (1) practice law in any court of the District of Columbia or of the United States; or
- (2) demand or receive any fee, gratuity, gift, or reward for giving advice in any matter relating to the office.

(July 29, 1970, 84 Stat. 516, Pub. L. 91-358, title I, § 111; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 5(b); June 13, 1994, Pub. L. 103-266, §§ 1(b)(98)-(102), 108 Stat. 713; Oct. 16, 2006, 120 Stat. 2024, Pub. L. 109-356, § 111(a), (b)(1).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 109-356, in the section heading, deleted “penalties”; and rewrote subsec. (b) and repealed subsecs. (d) and (e), which read as follows:

“(b) In matters over which the Superior Court has probate jurisdiction or powers, the Register of Wills shall —

“(1) make full and fair entries, in separate records, of the proceedings of the court;

“(2) make fair record in strong bound books of all wills proved before the Register of Wills or the court, keeping separate books for wills within the jurisdiction of the court;

“(3) make fair and separate record of other matters required by law to be recorded in the court;

“(4) lodge in places of safety, designated by the court, original papers filed with him [the Register of Wills];

“(5) make out and issue every summons, process, and order of the court;

“(6) make fair and uniform tables of the Register’s fees, and post them in a conspicuous place in the Register’s office for the inspection of persons having business therein;

“(7) prepare and submit to the Executive Officer of the District of Columbia courts such reports as may be required; and

“(8) in every respect, act under the control and direction of the court.”

“(d) The Register of Wills shall forfeit to the court the sum of \$50 for each day that the tables referred to in subsection (b)(6) are missing through the Register’s neglect, which may be recovered as other debts for the same amount are recoverable.

“(e) If the Register of Wills or a person acting for the Register of Wills takes a greater fee than the fee provided for by law, the Register of Wills shall pay the party injured \$100, which may be recovered as other debts for the same amount are recoverable.”

Chapter 25

Attorneys.

Section

11-2501. Admission to bar; regulations; prior admission.

11-2502. Censure, suspension, or disbarment for cause.

Section

11-2503. Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment.

11-2504. Censure, suspension, or disbarment by other courts.

§ 11-2501. Admission to bar; regulations; prior admission.

Notes of Decisions

Bar Counsel immunity 3.5

1. In general

It is appropriate to consider the public perception of and confidence in the bar when determining the fitness of original applicants to practice law. In *re Dortch*, 2004, 860 A.2d 346. Attorney And Client ⇨ 4

Applicant for admission to the bar who was presently disbarred in a sister jurisdiction was not entitled to grant of admission application. In *re Mbakpuo*, 2003, 829 A.2d 217. Attorney And Client ⇨ 4

The Court of Appeals has the inherent and exclusive authority to define and regulate the practice of law in the District of Columbia. In *re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Attorney And Client ⇨ 32(3)

The Court of Appeals exercises some, but not exclusive, authority over the unauthorized practice of law by nonlawyers. In *re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Attorney And Client ⇨ 12(1)

Federal government's power to authorize nonlawyers to practice before federal agencies does not oblige the Court of Appeals to allow persons in the District of Columbia to provide false or misleading information about their authority to practice law in any context, including appearances before federal administrative or regulatory agencies. In *re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Attorney And Client ⇨ 12(8)

Injunction prohibiting nonlawyer from misrepresenting his qualifications to practice before District of Columbia agencies did not bar him from practicing before those agencies that permitted nonlawyer representation. In *re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Injunction ⇨ 1370

3. Sovereign immunity

Under District of Columbia law, members of Office of Bar Counsel were entitled to absolute immunity from federal and state civil rights liability arising from their decision not to initiate formal

disciplinary proceedings against attorney as result of former client's complaints, where members acted only in their official capacity, decision was judicial in nature, and client retained right to seek review of decision. *Nwachukwu v. Rooney*, 2005, 362 F.Supp.2d 183. Civil Rights ⇨ 1376(8); Civil Rights ⇨ 1737

Under District of Columbia law, professional disciplinary violations arise from attorney's malfeasance, not actual harm imposed on client. *Nwachukwu v. Rooney*, 2005, 362 F.Supp.2d 183. Attorney And Client ⇨ 44(1)

3.5. Bar Counsel immunity

Under District of Columbia law, members of Office of Bar Counsel were entitled to absolute immunity from federal and state civil rights liability arising from their decision not to initiate formal disciplinary proceedings against attorney as result of former client's complaints, where members acted only in their official capacity, decision was judicial in nature, and client retained right to seek review of decision. *Nwachukwu v. Rooney*, 2005, 362 F.Supp.2d 183. Civil Rights ⇨ 1376(8); Civil Rights ⇨ 1737

4. Good moral character

Factors to be considered in evaluating moral fitness for admission to the bar of applicants with criminal backgrounds include: nature and character of offenses committed, number and duration of offenses, age and maturity of applicant when offenses were committed, social and historical context in which offenses were committed, sufficiency of punishment undergone and restitution made in connection with offenses, grant or denial of pardon for offenses committed, number of years that have elapsed since the last offense was committed, presence or absence of misconduct during period since last offense committed, applicant's current attitude about prior offenses, applicant's candor, sincerity and full disclosure in filings and proceedings on character and fitness, applicant's constructive activities and accomplishments subsequent to criminal convictions, and opinions of character witnesses about applicant's moral fitness. In *re Dortch*, 2004, 860 A.2d 346. Attorney And Client ⇨ 4

A conviction for a crime involving moral turpitude is conclusive evidence of a bar applicant's lack

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of good moral character at time of offense. In re Dortch, 2004, 860 A.2d 346. Judgment $\Rightarrow$ 648

“Character and fitness” test imposed on applicant for admission to the bar is two pronged; not only must applicant demonstrate requisite moral qualifications and learning in the law, but he also must show that his admission to practice of law will not be detrimental to integrity of the bar, administration of justice, or public interest. In re Dortch, 2004, 860 A.2d 346. Attorney And Client $\Rightarrow$ 4

Burden on applicant for admission to the bar of demonstrating, by clear and convincing evidence, that he possesses good moral character and general fitness to practice law is imposed for protection of prospective clients, and assurance of ethical, orderly, and efficient administration of justice. In re Dortch, 2004, 860 A.2d 346. Attorney And Client $\Rightarrow$ 7

Applicant, who had previously been convicted of second-degree murder, attempted armed robbery, and conspiracy, failed to establish by clear and convincing evidence that he possessed requisite good moral character and general fitness for admission to the bar; applicant's conduct was product of neither inexperience nor immaturity, applicant's failure to make restitution undermined his claim of moral regeneration, and although applicant's law-abiding behavior over 30 years since he committed offense was some evidence of his rehabilitation, there was no substantial record of personal sacrifice, outstanding service to others, or similar ethical behavior on applicant's part that would tend to confirm his indisputable moral regeneration. In re Dortch, 2004, 860 A.2d 346. Attorney And Client $\Rightarrow$ 4

Applicant, who sought admission to the bar after being suspended from practice of law in Indiana arising out of battery charges, failed to meet burden imposed on him of establishing by clear and convincing evidence that he possessed good moral character required in order to practice law in jurisdiction. In re Wells, 2003, 815 A.2d 771. Attorney And Client $\Rightarrow$ 7

When faced with an applicant seeking membership in the bar who has engaged in the unauthorized practice of law, the Committee on Admissions' task is not to devise a punishment for that practice; instead, the Committee considers an applicant's unauthorized practice as a factor to evaluate in determining whether the applicant has satisfied the burden of demonstrating, by clear and convincing evidence, that he or she possesses the requisite good moral character and fitness to practice law required by statute. In re Greenwald, 2002, 808 A.2d 1231. Attorney And Client $\Rightarrow$ 7; Attorney And Client $\Rightarrow$ 12(26)

The Committee on Admissions does not believe that unauthorized practice of law should be a *per se* basis for denying an application for admission to the bar, but rather that the facts of each case should be evaluated to determine whether, considering the totality of circumstances, the applicant's unauthorized practice is reflective of character

flaws that require denial of an application for admission. In re Greenwald, 2002, 808 A.2d 1231. Attorney And Client $\Rightarrow$ 4

The admissions process to the bar should not treat unauthorized practice so severely that it erects an insurmountable obstacle to attorneys who have violated prohibition against the unlicensed practice of law, but now wish to conform their conduct to the law by becoming members of the bar; however, if an applicant's unauthorized practice demonstrates character flaws that preclude his or her admission to the bar, Committee on Admissions will not hesitate to recommend that Court of Appeals deny an application. In re Greenwald, 2002, 808 A.2d 1231. Attorney And Client $\Rightarrow$ 4

Attorney seeking admission to the bar had good faith basis for believing that federal practice exception to prohibition against unlicensed practice of law applied to attorney's practice of international trade law, and thus, no negative conclusion could be drawn concerning attorney's character based on such conduct, where attorney and his colleagues testified that they did not believe that attorney was legally obligated to be a member of the District of Columbia Bar in order to practice before federal agencies which did not require a party's representative to be a member of any bar. In re Greenwald, 2002, 808 A.2d 1231. Attorney And Client $\Rightarrow$ 4

“Non-trade” work performed by attorney without admission to the District of Columbia (D.C.) Bar was so remote in time that such work could not form basis for a negative conclusion about attorney's present moral character and fitness to practice law, for purposes of admission to the bar, where such legal work consisted of rendering assistance on one matter more than 14 years earlier. In re Greenwald, 2002, 808 A.2d 1231. Attorney And Client $\Rightarrow$ 4

Attorney seeking admission to the bar acted with an honest, albeit mistaken, belief that attorney was not required to be admitted to the District of Columbia (D.C.) Bar in order for attorney to represent parties before foreign tribunals dealing with international trade matters, even though attorney was giving advice from law office in D.C., and thus, no negative conclusion could be drawn concerning attorney's character based on such conduct, where foreign tribunals did not require a party's representative to be an attorney. In re Greenwald, 2002, 808 A.2d 1231. Attorney And Client $\Rightarrow$ 4

Determination by the Committee on the Unauthorized Practice of Law (CUPL) that attorney demonstrated an “apparent lack of candor” in his application for admission to the bar based on his omission of complete description of attorney's areas of practice, did not warrant a negative determination about attorney's character; where statement giving alleged incomplete description was not a response to a question asking for a complete description of attorney's practice, but rather an unsolicited addendum to a list of references, and attorney accurately described the nature of his practice

in all material respects when CUPL inquired about it, including his work before foreign tribunals. In *re Greenwald*, 2002, 808 A.2d 1231. Attorney And Client ⇨ 4

Although attorney seeking admission to the bar did not initially disclose his “non-trade work” to Committee on the Unauthorized Practice of Law (CUPL) in his application for admission to the bar, omission of such work was not material, and thus did not reflect adversely on attorney’s character, where such “non-trade work” consisted of one matter that was more than 14 years old and another matter that did not involve the giving of legal advice. In *re Greenwald*, 2002, 808 A.2d 1231. Attorney And Client ⇨ 4

Attorney’s lack of diligence in ascertaining whether his practice of law required admission to the District of Columbia’s (D.C.) Bar did not give rise to conclusion that attorney did not possess good moral character and fitness to practice law as required for admission to the bar, where such lack of diligence was outweighed by attorney’s good faith belief that his actions were proper, attorney’s candid acknowledgment that his belief was mistaken, attorney’s reputation for insisting upon honest disclosure of required information by his clients, attorney’s transmission of that value to those work with him, attorney’s contributions as a teacher to law students, and the favorable opinions of his character offered by attorneys and others who worked with him or observed his work over the years. In *re Greenwald*, 2002, 808 A.2d 1231. Attorney And Client ⇨ 4

5. Felons

Applicants for admission to the bar who have been convicted of crimes of moral turpitude are required to have finished serving their sentences, including any parole terms, before they can be found fit to engage in the practice of law. In *re Dortch*, 2004, 860 A.2d 346. Attorney And Client ⇨ 4

Applicant could not demonstrate by clear and convincing evidence that he was fit to assume responsibilities and be accorded privileges of an officer of the court, where applicant was on parole for second-degree murder, attempted armed robbery, and conspiracy at time of his application to the bar. In *re Dortch*, 2004, 860 A.2d 346. Attorney And Client ⇨ 4

Passage of time between felony and application for admission to the state bar, alone, is insufficient to warrant admission. In *re Dortch*, 2004, 860 A.2d 346. Attorney And Client ⇨ 4

A prior criminal conviction does not necessarily require exclusion of an applicant from the bar for all time; such a per se rule of exclusion would collide with principle that good character and fitness of the applicant at time of application is the appropriate test. In *re Dortch*, 2004, 860 A.2d 346. Attorney And Client ⇨ 4

6. Independent investigations by Committee on Admissions

Attorney, who had been disbarred in another state, was entitled to a hearing before the Committee on Admissions (COA) on his application for admission to the Bar; attorney contended that an exception to the reciprocal discipline rule applied and that the discipline imposed in other state was substantially more severe than the sanction that would have been imposed had attorney committed misconduct within state. In *re Ramos*, 2004, 860 A.2d 843. Attorney And Client ⇨ 7

9. Judicial review, generally

Court of Appeals draws a distinction, in attorney disciplinary proceedings, between false statements made by an attorney during a disciplinary investigation and false statements made by an attorney during the bar application process. In *re Demos*, 2005, 875 A.2d 636. Attorney And Client ⇨ 40; Attorney And Client ⇨ 42

Rather than taking the view that prior serious misconduct invariably requires disqualification, Court of Appeals considers the facts of each case in light of the totality of circumstances surrounding an application for bar admission; without minimizing or discounting adverse inferences to be drawn from an applicant’s criminal record, Court of Appeals also takes evidence of reform and rehabilitation into account. In *re Dortch*, 2004, 860 A.2d 346. Attorney And Client ⇨ 4

Although Court of Appeals affords the Committee’s recommendations of Committee on Admissions some deference, the ultimate decision regarding admission or denial of admission to the bar remains for Court of Appeals to make. In *re Dortch*, 2004, 860 A.2d 346. Attorney And Client ⇨ 7

When evaluating applications for admission to the bar, an appellate court affords some deference to recommendations of the Committee on Admissions, making due allowance for the Committee’s opportunity to observe and evaluate demeanor of applicant where relevant, e.g., with regard to such attitudes as sincerity or remorse. In *re Wells*, 2003, 815 A.2d 771. Attorney And Client ⇨ 7

Ultimate decision regarding admission to the bar or denial of admission remains for an appellate court to make. In *re Wells*, 2003, 815 A.2d 771. Attorney And Client ⇨ 7

11. Injunctions

Injunction requiring nonlawyer to provide accurate information to prospective clients about his qualifications to practice before administrative agencies and prohibiting him from providing information that was false or misleading in regard to his authority to practice law was well within inherent and exclusive authority of the Court of Appeals to define and regulate the practice of law in the District of Columbia. In *re Banks*, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Injunction ⇨ 1370

Government presented sufficient evidence to warrant a finding of criminal contempt against nonlawyer for violating injunctions against unau-

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thorized practice of law, including evidence that nonlawyer had referred to himself as a former administrative law judge in publication and advertisement, and that nonlawyer induced client to believe she was being represented by attorney. In re Banks, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Injunction ⇨ 1746

Upon adjudging a person in civil contempt for disobeying an injunction against the unauthorized

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practice of law, the Court of Appeals could order the person to pay attorney fees of members of Committee on Unauthorized Practice of Law (CUPL); no conflict of interest or appearance thereof was sufficient in members' instituting and litigating civil contempt proceedings to prohibit award of attorney fees. In re Banks, 2002, 805 A.2d 990, certiorari denied 123 S.Ct. 2577, 539 U.S. 927, 156 L.Ed.2d 604. Injunction ⇨ 1800

§ 11-2502. Censure, suspension, or disbarment for cause.

Law Review and Journal Commentaries

No Stone Left Unturned: The Failure of Attorney Self-Regulation in the District of Columbia.

Michael S. Frisch, 18 Geo. J. Legal Ethics 325 (2005).

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1. In general

Under District of Columbia law, purpose in conducting attorney disciplinary proceedings and imposing sanctions is not to punish attorney, rather, it is to offer protection by assuring continued or restored fitness of attorney to practice law. *Nwachukwu v. Rooney*, 2005, 362 F.Supp.2d 183. Attorney And Client ⇨ 49

For purposes of determining appropriateness of identical and reciprocal discipline in attorney disciplinary proceedings, New Jersey disciplinary proceedings against subject attorney did not result in miscarriage of justice, where state disciplinary authorities located and notified attorney of charges, and attorney participated in those disciplinary proceedings by speaking with investigator prior to his

reprimand, and appearing for audit in connection with matter resulting in his disbarment. In re Gruber, 2005, 889 A.2d 991. Attorney And Client ⇨ 59.18

Attorney would not be ordered by Court of Appeals, in attorney disciplinary proceeding, to provide restitution to client by returning \$14,000 retainer client had paid attorney for representation in drug prosecution in which client entered guilty plea but later requested attorney's additional assistance in withdrawing plea; attorney provided substantial services to client, and restitution determination was not possible because record included no billing records, affidavits, or other materials necessary for such determination and neither party had availed itself of opportunity to request from Board on Professional Responsibility a remand to hearing committee, upon showing of good cause, for further fact finding. In re Ponds, 2005, 888 A.2d 234. Attorney And Client ⇨ 59.10

Court of Appeals owes findings of ultimate fact and conclusions of law made by the Board on Professional Responsibility in attorney disciplinary proceedings no deference upon judicial review; its review is de novo. In re Cater, 2005, 887 A.2d 1. Attorney And Client ⇨ 57

Purpose of imposing a sanction in attorney disciplinary proceedings is not to punish the attorney, but to protect the public and the courts, safeguard the integrity of the profession, and deter the respondent and other attorneys from engaging in similar misconduct. In re Cater, 2005, 887 A.2d 1. Attorney And Client ⇨ 59.3

An attorney's character and fitness can be evaluated only by a disciplinary process that measures his or her behavior as a whole, not by separate inquiries into isolated instances of alleged misconduct. In re Wright, 2005, 885 A.2d 315. Attorney And Client ⇨ 49

In determining whether the provisions of bar rule governing attorney disciplinary proceedings apply, court looks to the substance of the bar's action, not to its label. *Sitcov v. District of Columbia Bar*, 2005, 885 A.2d 289. Attorney And Client ⇨ 47.1

Only the Court of Appeals has the authority to discipline attorneys. *Sitcov v. District of Columbia Bar*, 2005, 885 A.2d 289. Attorney And Client ⇨ 36(1)

Factors used to determine the appropriate sanction in an attorney disciplinary proceeding include: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty and/or misrepresentation; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney had a previous disciplinary history; (6) whether or not the attorney acknowledged his or her wrongful conduct; and (7) circumstances in mitigation of the misconduct. In *re Thyden*, 2005, 877 A.2d 129. Attorney And Client ⇨ 59.5(1)

Choice of sanction for attorney misconduct is not an exact science and depends on the facts and circumstances of each particular proceeding. In *re Edwards*, 2005, 870 A.2d 90. Attorney And Client ⇨ 59.5(1)

Disciplinary sanctions are a means of assuring the attorney's fitness to practice and for protecting the public from attorney misconduct. In *re Schlemmer*, 2005, 870 A.2d 76. Attorney And Client ⇨ 59.3

The purpose of imposing discipline is to serve the public and professional interests identified and to deter similar conduct in the future rather than to punish the attorney. In *re Austin*, 2004, 858 A.2d 969. Attorney And Client ⇨ 49

The imposition of sanction in bar discipline cases is not an exact science and may depend on the facts and circumstances of each particular proceeding. In *re Austin*, 2004, 858 A.2d 969. Attorney And Client ⇨ 59.5(1)

An attorney's disciplinary record is considered in determining an appropriate sanction in a disciplinary matter; an attorney's disciplinary history is an important factor because it sheds considerable light on continued fitness. In *re Bettis*, 2004, 855 A.2d 282. Attorney And Client ⇨ 59.5(4)

Attorney was not eligible to receive a nunc pro tunc disciplinary suspension to run from the date she filed an affidavit in which she disclosed her decision to suspend herself; attorney failed to comply with the notice requirements for attorneys who were suspended, bar records and the public were unaware that attorney was on a self-imposed suspension from the practice of law, attorney failed to establish that her circumstances were "unique" or compelled the allowance of nunc pro tunc suspension, and attorney's affidavits before the Board on Professional Responsibility were misleading and less than forthright concerning her unauthorized practice of law during suspension. In *re Soininen*, 2004, 853 A.2d 712. Attorney And Client ⇨ 60

When determining the consistency of attorney disciplinary sanctions between cases, it is necessary to compare the gravity and frequency of the misconduct, any prior discipline, and any mitigating factors such as cooperation with Bar Counsel,

remorse, illness, or stress. In *re Schlemmer*, 2004, 840 A.2d 657. Attorney And Client ⇨ 59.5(3)

Attorney's claim, in disciplinary proceedings, that he did not know the rule requiring deposit of client settlement funds in a separate trust account also applied to funds that were not owed to the client but to third-party medical providers, did not excuse or mitigate misconduct in commingling funds; if a failure to understand the most central Rules of Professional Conduct could be an acceptable defense for a charged violation, even in cases of good faith mistake, the public's confidence in the bar and, more importantly, the public's protection against lawyer overreaching would diminish considerably. In *re Smith*, 2003, 817 A.2d 196. Attorney And Client ⇨ 59.5(5)

Attorney fees should not be assessed lightly or without fair notice and opportunity for hearing on record; attorney is entitled at least to meaningful opportunity to argue, either in open court or on paper, against imposition of any such sanctions against him. *Delacruz v. Harris*, 2001, 780 A.2d 262. Attorney And Client ⇨ 24; Costs ⇨ 2

Public censure is an established sanction for conduct interfering with the administration of justice. In *re Balsamo*, 2001, 780 A.2d 255. Attorney And Client ⇨ 59.8(1)

Where an aggravating element of dishonesty is present, the sanction normally imposed for types of disciplinary violations, other than violations of the rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation, may be increased. In *re Balsamo*, 2001, 780 A.2d 255. Attorney And Client ⇨ 59.5(4)

Out-of-town actions of an active member of District of Columbia Bar are subject to review under the District's Rules on Professional Responsibility. In *re Bernstein*, 2001, 774 A.2d 309. Attorney And Client ⇨ 32(3)

Attorney's due process rights were not violated by denial of his motion for second continuance of disciplinary hearing, which was subsequently held in his absence, despite his claim that medical condition precluded his attendance; after successfully avoiding service for several months, attorney requested and was granted continuance of first hearing date, disciplinary authorities made persistent efforts to provide attorney with opportunity to provide evidence of his claimed illness, which he failed to do, and he was able to travel to London within days of hearing. In *re Asher*, 2001, 772 A.2d 1161. Attorney And Client ⇨ 54; Constitutional Law ⇨ 4273(3)

Proceedings to disbar an attorney are not intended for the purpose of punishment, but to protect the public from lawyers who engage in unethical conduct. In *re Asher*, 2001, 772 A.2d 1161. Attorney And Client ⇨ 49

1.3. Construction and application

The term "dishonesty," as used in rule of professional conduct regarding engaging in conduct involving dishonesty, while encompassing fraud, deceit, and misrepresentation, also includes conduct evincing a lack of honesty, probity or integrity in

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principle or a lack of fairness and straightforwardness. In *re Cleaver-Bascombe*, 2006, 892 A.2d 396. Attorney And Client ⇨ 38

1.4. Disbarment

Conduct of attorney, in violating Rules of Professional Conduct regarding the failure to return unearned fees, false or misleading statements on services, fraud or dishonest conduct, and serious interference with the administration of justice, warranted disbarment, where attorney promised to refund clients' money if she was unable to obtain religious-worker visas, attorney evaded clients' requests for information after she was unable to obtain the visas, clients resorted to government website to learn that their applications had been denied, attorney for several years failed to return clients' money as promised, clients' status as non-citizens made attorney's misconduct difficult to detect, attorney could not have obtained the promised visas without engaging in fraud, and attorney lied to her clients and Bar Counsel about the status off her efforts to make good on her refund obligations. In *re Kanu*, 2010, 5 A.3d 1. Attorney And Client ⇨ 59.14(1); Attorney And Client ⇨ 59.14(2)

Disbarment was appropriate sanction for attorney's cumulative misconduct, which included disobeying court orders, filing frivolous claims, engaging in disruptive conduct, and seriously interfering with the administration of justice, in connection with his representation of client, his efforts to disrupt foreclosure sale of his condominium apartment, and his fraudulent and dishonest conduct directed at his mother, who had been his principal client for the past ten to 15 years; attorney's pattern of predatory and deceitful conduct demonstrated his total contempt of his ethical obligations, the law, court rules and procedure, and even basic civility. In *re Orzi*, 2009, 974 A.2d 891. Attorney And Client ⇨ 59.14(1)

Attorney's misappropriation of funds of ward of the state for whom she acted as guardian and failure to cooperate in subsequent disciplinary proceedings warranted disbarment. In *re Wilson*, 2008, 953 A.2d 1052. Attorney And Client ⇨ 59.14(1); Attorney And Client ⇨ 59.14(2)

Attorney's intentional misappropriation and unauthorized use of client funds warranted disbarment, with reinstatement conditioned on restitution to clients in amount of \$36,930. In *re Stewart*, 2008, 953 A.2d 1034. Attorney And Client ⇨ 59.10; Attorney And Client ⇨ 59.14(2)

In virtually all cases of misappropriation in attorney discipline proceedings, disbarment will be the only appropriate action unless it appears that the misconduct resulted from nothing more than simple negligence. In *re Mitrano*, 2008, 952 A.2d 901, certiorari denied 129 S.Ct. 2064, 173 L.Ed.2d 1134. Attorney And Client ⇨ 59.14(2)

Disbarment, with restitution as a condition for reinstatement, was warranted for attorney who took and spent for his own purposes a check for over \$241,000 issued to his client while knowing that the majority of the funds did not belong to

him, in violation of rules of professional conduct prohibiting a lawyer from commission of a criminal act, engaging in dishonesty, engaging in misappropriation, failing to notify client of receipt of funds, failing to segregate funds, failing to deposit funds in separate account, and failing to inform client. In *re Mitrano*, 2008, 952 A.2d 901, certiorari denied 129 S.Ct. 2064, 173 L.Ed.2d 1134. Attorney And Client ⇨ 59.14(2); Attorney And Client ⇨ 59.14(4)

Attorney's disbarment from practice of law in Texas for misappropriation was within range of discipline that might have been imposed if misappropriation had occurred in District of Columbia, and thus, disbarment from practice of law in District of Columbia was appropriate reciprocal sanction, especially in light of attorney's failure to respond or to contest proceedings. In *re Dobbyn*, 2008, 943 A.2d 1165. Attorney And Client ⇨ 59.18

Disbarment was appropriate sanction for attorney's misconduct in recklessly misappropriating client funds by failing to pay workers' compensation carrier full amount of statutory lien on client's settlement with tortfeasor for four years, until lawsuit was filed against attorney disciplinary proceeding was initiated, in the absence of extraordinary circumstances. In *re Cloud*, 2007, 939 A.2d 653, as amended, rehearing granted. Attorney And Client ⇨ 59.14(2)

Conduct of attorney, in violating Rules of Professional Conduct regarding the failure to return unearned fees, false or misleading statements on services, fraud or dishonest conduct, and serious interference with the administration of justice, warranted disbarment, where attorney promised to refund clients' money if she was unable to obtain religious-worker visas, attorney evaded clients' requests for information after she was unable to obtain the visas, clients resorted to government website to learn that their applications had been denied, attorney for several years failed to return clients' money as promised, clients' status as non-citizens made attorney's misconduct difficult to detect, attorney could not have obtained the promised visas without engaging in fraud, and attorney lied to her clients and Bar Counsel about the status off her efforts to make good on her refund obligations. In *re Kanu*, 2010, 5 A.3d 1. Attorney And Client ⇨ 59.14(1); Attorney And Client ⇨ 59.14(2)

1.5. Suspension

Attorney who failed to provide competent, zealous, and diligent representation, who did not act promptly and communicate adequately with clients or maintain records on client funds or protect their interests after he was discharged, who did not supervise firm's other lawyers or nonlawyers and assure their compliance with Rules of Professional Conduct, who made false statements to a tribunal and in disciplinary matter, who engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation, who did not withdraw from representation when it resulted in violation of law, and who

continued to practice after being suspended, would be suspended for one year. In re Toppelberg, 2009, 966 A.2d 852. Attorney And Client ⇨ 59.13(3); Attorney And Client ⇨ 59.13(4)

Attorney was ineligible for nunc pro tunc treatment of her suspension from date of imposition of discipline in Delaware, where Delaware court, acting as attorney's agent, failed to inform Bar Counsel that attorney was admitted to practice under a different name in District of Columbia, attorney knew or should have known that she was admitted to practice under different names in the two jurisdictions, and attorney did not hear anything from the District of Columbia bar concerning her disciplinary case for significant period of time, despite having been notified of disciplinary investigations in other jurisdictions in which she was admitted. In re Ayres-Fountain, 2008, 955 A.2d 157. Attorney And Client ⇨ 59.18

The temporary suspension of an attorney pending the completion of disciplinary proceedings has the same effect as a preliminary injunction barring the attorney from the practice of law. In re Downey, 2008, 960 A.2d 1135, opinion amended on rehearing 975 A.2d 152. Attorney And Client ⇨ 48

Good cause existed to stay or set aside order to temporarily suspend an attorney after his guilty plea to the "serious crime" of engaging in business of money transmission without a license, a felony; attorney's record was unblemished, offense involved no scienter or moral turpitude, violation arose outside his normal practice, risk of harm to public from permitting him to practice in interim was low, it was possible that an interim suspension might exceed sanction for the offense itself, and suspension would harm attorney's ability to support his family. In re Downey, 2008, 960 A.2d 1135, opinion amended on rehearing 975 A.2d 152. Attorney And Client ⇨ 48

Suspension from practice of law for 90 days, stayed in favor of two years probation, was appropriate reciprocal sanction for attorney's admission to having submitted falsified travel expense reports to his law firm, which resulted in 90-day suspension in Colorado. In re Wittenberg, 2008, 945 A.2d 615. Attorney And Client ⇨ 59.18

Sanction of 120-day suspension from practice of law, with reinstatement conditioned on full compliance and proof of fitness to practice law was appropriate, in connection with attorney's failure to respond to repeated inquiries from bar counsel and to compliance orders from Board on Professional Responsibility in connection with ethical complaints, where such sanction was not inconsistent with discipline imposed in similar cases. In re Solomon, 2008, 945 A.2d 614. Attorney And Client ⇨ 59.13(3)

Eighteen-month suspension from the practice of law was warranted for attorney's misconduct during child support hearing, in submitting altered checks to hearing court and making false statements to the court claiming he made more pay-

ments than he actually had. In re Mayers, 2008, 943 A.2d 1170. Attorney And Client ⇨ 59.13(3)

Suspension from practice of law for 30 days, with reinstatement conditioned on fitness to resume practice and full compliance with subpoena for information related to trust account, was appropriate sanction for attorney's failure to respond to requests for information and subsequent refusal to comply with subpoena and to attend hearing, in violation of Bar Rules and Rules of Professional Conduct. In re Cooper, 2007, 936 A.2d 832. Attorney And Client ⇨ 59.13(3)

Attorney's misconduct while practicing law in other state in which he was licensed, in failing to return unearned fees to client or cooperate and participate in disciplinary investigation or proceeding, warranted identical discipline that was imposed in other state, which was a one-year suspension from practice of law. In re Christenson, 2007, 940 A.2d 84. Attorney And Client ⇨ 59.18

Nine-month suspension from practice of law, with three months stayed, and two years of probation was appropriate sanction for attorney's admitted misconduct of allowing nonlawyer employee to negotiate settlement for client family's claims without consulting clients and placement of settlement funds in attorney's trust account, which account later fell below amount of settlement, in violation of numerous rules of professional responsibility, including rules requiring attorney to provide competent representation, and to communicate adequately with client, and rule governing trust account recordkeeping. In re Herbst, 2007, 931 A.2d 1016. Attorney And Client ⇨ 59.13(3); Attorney And Client ⇨ 59.13(4); Attorney And Client ⇨ 59.17(1)

For purposes of nunc pro tunc treatment of attorney's suspension in reciprocal disciplinary proceedings, attorney's suspension in District of Columbia would not be deemed to have begun until attorney filed supplemental affidavit suggested by Board on Professional Responsibility, making clear whom he notified of his suspension, that he had no private clients to notify, or, if he did have any clients, that he had notified them, as well as adverse parties, and that he had returned any client property. In re Stuart, 2008, 942 A.2d 1118. Attorney And Client ⇨ 59.18

For purposes of reinstatement, effective date of 60-day suspension from practice of law imposed on attorney would begin from time he filed affidavit fully compliant with bar rule requiring him to file affidavit containing required information regarding other jurisdictions in which he was licensed to practice and indicating steps taken to advise clients and adversaries of his suspended status. In re Sobro, 2006, 905 A.2d 158. Attorney And Client ⇨ 59.13(3)

Conduct of attorney, who represented borrower in probate proceeding after he learned that borrower in transaction attorney's title company was contacted to close did not own property, in violating rules of professional conduct on competent representation, skill and care, conflict of interest

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and conduct that seriously interfered with the administration of justice, warranted suspension of attorney for six months; attorney's conflict of interest was the core of his misconduct and arose from his self-interest in closing transaction, attorney had previously been suspended for six months for taking a fee from an estate without proper authorization, attorney while representing borrower again took a fee from an estate without proper authorization, attorney's misconduct prejudiced borrower, attorney failed to acknowledge any wrongdoing, and six-month suspension was not inconsistent with range of discipline imposed in similar cases. In re Evans, 2006, 902 A.2d 56. Attorney And Client ⇨ 59.13(3)

Attorney's neglect of cases of three clients before United States District Court, his actions in misleading them and lying to them as to status of their cases, his concealment from them of his suspension from practice, and his unauthorized practice of law, warranted four-month suspension from practice of law, as recommended by Board on Professional Responsibility, in light of unwarranted temporary suspension previously imposed. In re Schoeneman, 2006, 891 A.2d 279. Attorney And Client ⇨ 59.13(3)

Suspension for 30 days, with requirement that attorney undergo ethical training as condition to reinstatement, was appropriate disciplinary sanction for attorney's conflict of interest, in violation of Maryland professional conduct rules which were applicable in District of Columbia disciplinary proceeding, in continuing to represent client after client had filed motion to withdraw his guilty plea in prosecution in Maryland federal court, where there was five-year delay in disciplinary proceeding and where during that period of delay attorney was publicly censured in District for new misconduct in Maryland. In re Ponds, 2005, 888 A.2d 234. Attorney And Client ⇨ 59.13(3)

1.7. Censure

Sanction of public censure was warranted for attorney, who treated flat fee provided by client's father as his own property without informed consent and who violated Rules of Professional Responsibility by commingling client funds with his own and by failing to promptly return fee when he was terminated, where determination that a flat fee was the property of a client unless the client gave informed consent to a different arrangement was one of first impression that applied prospectively, client's father understood that flat fee was the property of attorney despite lack of informed consent, attorney's commingling of client funds by mistakenly depositing a portion of the fees in client escrow account was a good faith mistake, attorney fully cooperated with Bar Counsel, attorney's two prior instances of discipline did not implicate moral character or integrity, and client did not act dishonestly or attempt to misappropriate client funds. In re Mance, 2009, 980 A.2d 1196, as amended. Attorney And Client ⇨ 59.8(2)

Reciprocal discipline of public censure was appropriate sanction for attorney who received public

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reprimand in Maryland for his failure to act with reasonable diligence and promptness in representing client or to keep complete record of monies received, where attorney participated in Maryland proceedings, admitted to sufficiency of the evidence, and consented to the disciplinary action. In re Page, 2007, 938 A.2d 1. Attorney And Client ⇨ 59.18

Public censure was appropriate reciprocal discipline for attorney who violated ethical rules of foreign state by misrepresenting to court that settlement negotiations had begun when in fact they had not, when seeking an extension of time to answer a complaint; rule violated by attorney was identical to District of Columbia Bar Rule, public censure was discipline imposed by the foreign state, and public censure was within range of appropriate sanctions. In re Robbins, 2006, 911 A.2d 1227. Attorney And Client ⇨ 59.18

1.8. Probation

Disbarment, with such disbarment to be stayed, and placement of attorney on probation for three years was appropriate sanction for attorney's misconduct, which included misappropriation of client funds, failure to maintain complete records, render appropriate accounts, or notify client of receipt of funds, and failure to return any prepaid unearned fees to client until 13 years after representation ended, as attorney's alcohol addiction was substantial cause of his misconduct, and he was substantially rehabilitated. In re Brown, 2006, 912 A.2d 568. Attorney And Client ⇨ 59.17(1)

2.5. Double jeopardy

Attorney had no double jeopardy right to have disciplinary proceedings held in abeyance until completion of disciplinary proceedings in another jurisdiction, arising from same alleged misconduct; double jeopardy principles did not apply, as disciplinary proceedings were not criminal. In re Asher, 2001, 772 A.2d 1161. Double Jeopardy ⇨ 22

Disciplinary proceedings, including those seeking disbarment, do not invoke the proscriptions against double jeopardy. In re Asher, 2001, 772 A.2d 1161. Double Jeopardy ⇨ 22

Since disciplinary proceedings are not criminal, double jeopardy principles do not apply. In re Asher, 2001, 772 A.2d 1161. Double Jeopardy ⇨ 22

3. Grounds for discipline—In general

Under District of Columbia law, professional disciplinary violations arise from attorney's malfeasance, not actual harm imposed on client. Nwachukwu v. Rooney, 2005, 362 F.Supp.2d 183. Attorney And Client ⇨ 44(1)

Under District of Columbia law, judicial immunity protects judges and officials performing quasi-judicial functions from liability for given act if: (1) act was not taken in clear absence of all jurisdiction, and (2) act is judicial act. Nwachukwu v. Rooney, 2005, 362 F.Supp.2d 183. Judges ⇨ 36; Officers And Public Employees ⇨ 114

Attorney's failure to respond to repeated inquiries from bar counsel and to compliance orders

from Board on Professional Responsibility in connection with ethical complaints violated District of Columbia bar rules. In *re Solomon*, 2008, 945 A.2d 614. Attorney And Client ⇨ 42

Attorney's misconduct during child support hearing, in submitting altered checks to hearing court and making false statements to the court claiming he made more payments than he actually had, violated rules of professional conduct prohibiting making a false statement of material fact to a tribunal, altering evidence, falsifying evidence, violating the rules through the acts of another, committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and engaging in conduct that seriously interferes with the administration of justice. In *re Mayers*, 2008, 943 A.2d 1170. Attorney And Client ⇨ 39; Attorney And Client ⇨ 42

Attorney's acts of dishonesty, including his misrepresentation that state of Arkansas wished to hire him on a contingency fee basis in an environmental lawsuit and his preparation and forgery of contingency fee agreement purportedly signed by assistant attorney general of Arkansas, violated rule of professional conduct prohibiting lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. In *re Slaugher*, 2007, 929 A.2d 433. Attorney And Client ⇨ 38; Attorney And Client ⇨ 41

Failure by attorney on interim suspension from practice of law to disclose in application for admission to Colorado bar his admission to practice in District of Columbia or interim suspension violated Rules of Professional Conduct by knowingly making false statement of material fact in connection with admission application, by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and by engaging in conduct that seriously interfered with administration of justice. In *re Powell*, 2006, 898 A.2d 365. Attorney And Client ⇨ 40

Attorney's failure to cooperate in three disciplinary investigations warranted 90-day suspension from practice of law. In *re Cater*, 2005, 887 A.2d 1. Attorney And Client ⇨ 59.13(3)

Attorney's conduct in failing to respond to Bar Counsel's letters during investigation of disciplinary complaint filed against him, regardless of whether letters were mailed to attorney's address, served by messenger, sent by certified mail, or transmitted by fax, warranted public censure. In *re Kaufman*, 2005, 878 A.2d 1187. Attorney And Client ⇨ 59.8(1)

Attorney's violation of professional conduct rules requiring competent representation, representation of clients with skill and care of similarly situated practitioners, adherence to client's objectives, diligence and zeal in representation, reasonable promptness in representation, and communication with clients warranted 60-day suspension from practice of law, with reinstatement conditioned on restitution to client, consecutive to

30-day suspension ordered in another matter, in light of attorney's extensive disciplinary history, including multiple suspensions and informal admonishments, where such sanction was not inconsistent with discipline imposed in cases involving similar violations. In *re Steinberg*, 2005, 878 A.2d 496. Attorney And Client ⇨ 59.13(3)

Attorney's actions in filing frivolous adversary claims in bankruptcy proceedings warranted 30-day suspension from practice of law; attorney failed to communicate with client throughout entire representation, failed to convey offer to settle case, allowed money sanctions to be entered against client's corporation, undertook action for purpose of advancing interests of other clients, seriously interfered with administration of justice, and failed to acknowledge seriousness of his conduct, and delays in proceedings did not mitigate sanction absent meritorious argument challenging substance of proceedings or evidence of prejudice. In *re Thyden*, 2005, 877 A.2d 129. Attorney And Client ⇨ 59.13(3)

Disbarment was warranted for attorney's violation of rules of professional conduct by failing to act with reasonable promptness in representing client, failing to keep client reasonably informed about status of matter, failing to take timely steps to protect client's interest upon termination, failing to act with candor toward tribunal, knowingly making false statement of material fact or law to third person, practicing law in another jurisdiction in violation of its regulations, making false or misleading communications about lawyer's services, failing to respond reasonably to lawful demand by disciplinary authority for information, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation or conduct seriously interfering with the administration of justice, and failing to comply with order of court or Board on Professional Responsibility. In *re Anya*, 2005, 871 A.2d 1181. Attorney And Client ⇨ 59.14(1)

Public censure and requirement that attorney complete a course in professional responsibility were appropriate sanctions for attorney who failed to take timely steps to protect client's interests in termination of representation, failed to represent client zealously, failed to act with reasonable promptness, failed to keep client reasonably informed, and engaged in conduct that seriously interfered with administration of justice. In *re Shepherd*, 2005, 870 A.2d 67. Attorney And Client ⇨ 59.8(1)

Disbarment was appropriate sanction for attorney who prepared a testamentary instrument which conveyed property to himself and his immediate family. In *re Devaney*, 2005, 870 A.2d 53. Attorney And Client ⇨ 59.14(1)

Attorney's lack of diligence in representation, failure to keep clients informed, failure to respond to disciplinary authority and bar inquiries, commingling of client and personal funds, and failure to keep trust account records, as established in three disciplinary actions involving 18 clients in original disciplining jurisdiction, warranted imposition of reciprocal three-year suspension from prac-

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tice of law, with fitness requirement for reinstatement. In re Winick, 2005, 866 A.2d 51. Attorney And Client ⇨ 59.18

Thirty-day suspension with reinstatement conditioned upon attorney's filing a response to the disciplinary complaint and his completion of six hours of continuing legal education courses was appropriate sanction for attorney who failed to respond to disciplinary authority, who seriously interfered with the administration of justice, and who failed to comply with an order of the Board on Professional Responsibility. In re Scanlon, 2005, 865 A.2d 534. Attorney And Client ⇨ 59.13(3)

In reciprocal disciplinary proceeding, attorney's unauthorized practice of law in Maryland, for which he was disbarred, constituted "misconduct" within the meaning of District of Columbia's ethical rules. In re Barneys, 2004, 861 A.2d 1270. Attorney And Client ⇨ 37.1

Attorney's violations of rules of professional conduct requiring competent and diligent representation, prohibiting conflicts of interest, and governing termination of representation warranted 90-day suspension from practice of law, in absence of any significant mitigating circumstance and in light of aggravating circumstances, namely, attorney's record of informal admonishments and public censures for neglect of other client matters. In re Douglass, 2004, 859 A.2d 1069. Attorney And Client ⇨ 59.13(3)

In an attorney disciplinary proceeding, what is the appropriate sanction necessarily turns on the nature of the attorney's misconduct. In re Austin, 2004, 858 A.2d 969. Attorney And Client ⇨ 59.5(6)

Disbarment of attorney was warranted, in attorney disciplinary proceeding, where attorney obtained loans totaling over \$27,000.00 from an elderly, uneducated client of very little means, he failed to repay client for the loans, and he sent a letter to client's new lawyer, which was purportedly from client, which informed new lawyer that client no longer needed the services of new lawyer and would work out her problems with attorney. In re Austin, 2004, 858 A.2d 969. Attorney And Client ⇨ 59.14(1)

The Court of Appeals determines what the appropriate attorney disciplinary sanction should be by considering the nature of the violation, aggravating and mitigating circumstances, the absence or presence of prior disciplinary sanctions, the moral fitness of the attorney, and the need to protect the legal profession, the courts, and the public. In re Bettis, 2004, 855 A.2d 282. Attorney And Client ⇨ 59.5(1)

Attorney's previous misconduct constituted an aggravating factor to be considered when determining appropriate sanction during attorney's second disciplinary proceeding; attorney's first disciplinary proceeding was based on a conviction for driving while intoxicated, theft, and possession of narcotics, the second proceeding involved attorney's unauthorized practice of law while she was under suspension from the first proceeding, and

the second proceeding occurred after attorney presented evidence that she had been rehabilitated and her substance abuse was no longer affecting her judgment. In re Soinen, 2004, 853 A.2d 712. Attorney And Client ⇨ 59.5(4)

Suspension in District of Columbia for 30 days with reinstatement subject to demonstration of fitness, rather than disbarment, which was the sanction imposed in Maryland, was warranted as reciprocal discipline for attorney's lack of diligence, lack of communication with client, and failure to protect client's interest in connection with terminating representation, where attorney had disappeared and likelihood of application for readmission was remote, and at time of misconduct, advances of legal fees were an attorney's property in District of Columbia while in Maryland apparently they were the client's property until earned by the attorney. In re Spitzer, 2004, 845 A.2d 1137. Attorney And Client ⇨ 59.18

Informal admonition letters issued, in other cases, by Bar Counsel on its own accord or at the direction of the Board of Professional Responsibility or the Court of Appeals, may contain sufficient detail to be useful to the Board or the Court of Appeals in determining the range of sanctions appropriate in similar circumstances. In re Schlemmer, 2004, 840 A.2d 657. Attorney And Client ⇨ 59.5(6)

An appropriate attorney disciplinary sanction will be based on a consideration of all relevant factors, including: (1) the nature of the violation; (2) the mitigating and aggravating circumstances; (3) the need to protect the public, the courts, and the legal profession; and (4) the moral fitness of the attorney. In re Schlemmer, 2004, 840 A.2d 657. Attorney And Client ⇨ 59.5(1)

Attorney's false statement in connection with his application for admission to District of Columbia Bar that legal work he had been doing was supervised by licensed attorney, serious neglect of obligations to clients, failure to provide competent representation, abandonment of clients, and failure to withdraw as counsel after accepting employment leaving him unable to satisfy his obligations to his private clients, warranted six-month suspension from practice of law. In re Starnes, 2003, 829 A.2d 488. Attorney And Client ⇨ 59.13(3)

Six-month suspension from practice of law imposed upon attorney following finding of multiple ethical violations and violations of court rules was not unduly punitive or inconsistent with sanctions meted out in comparable cases to protect public. In re Starnes, 2003, 829 A.2d 488. Attorney And Client ⇨ 59.13(3)

What may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty, for purposes of ethics rule, precluding attorneys from engaging in acts of dishonesty, fraud, deceit or misrepresentation. In re Romansky, 2003, 825 A.2d 311. Attorney And Client ⇨ 37.1

Obtaining the best possible outcome for one's clients is never a viable defense to charges of

ethical misconduct; the ends do not justify the means. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 46

Attorney's knowing and intentional commingling and misappropriating of client funds by depositing them into his operating account rather than a trust account, and his inadvertent failure to promptly disburse from settlement proceeds a payment due a third party, warranted public censure. In re Graham, 2002, 795 A.2d 51. Attorney And Client ⇨ 59.8(2)

Attorney's commingling of personal funds with clients' funds held in trust, which he would use at times as an operating account, a practice which ultimately resulted in his negligent misappropriation of a portion of entrusted client funds required to be held on behalf of a third-party medical provider, warranted six-month suspension; although attorney contended that mitigating factors warranted a lesser sanction, the commingling continued after the misappropriation until Bar Counsel, alerted of an overdraft, began its investigation. In re Davenport, 2002, 794 A.2d 602. Attorney And Client ⇨ 59.13(4)

Attorney's failure to keep fiduciary funds separate from his own, failure to promptly withdraw from case and surrender client files to successor counsel, failure to promptly deliver client funds once representation terminated, careless record keeping, and filing of complaint falsely identifying himself as counsel warranted one-year suspension from practice of law. In re Arneja, 2002, 790 A.2d 552. Attorney And Client ⇨ 59.13(4)

Disbarment of attorney can be warranted for conduct involving severe acts of dishonesty. In re Rocca, 2001, 786 A.2d 560. Attorney And Client ⇨ 59.14(1)

Imposition of sanctions in bar discipline, as with criminal punishment, is not an exact science but may depend on the facts and circumstances of each particular proceeding. In re Fair, 2001, 780 A.2d 1106. Attorney And Client ⇨ 59.5(1)

The court generally imposes a public censure or short-term suspension for a violation of the rule requiring competent representation. In re Balsamo, 2001, 780 A.2d 255. Attorney And Client ⇨ 59.8(1); Attorney And Client ⇨ 59.13(1)

Public censure was warranted for attorney's conduct in charging \$800 on an uncontested claim for personal injury protection (PIP) benefits paid under automobile insurance policy and failing to notify client's health insurer, which had lien on settlement proceeds, of the receipt of PIP benefits. In re Shaw, 2001, 775 A.2d 1123. Attorney And Client ⇨ 59.8(1)

Conduct of attorney in failing to inform client, who he had represented in workers' compensation matter, that amount of his fee had been limited by Industrial Commission, retaining funds in excess of his approved fee, and depositing funds from settlement of client's case in his own personal account, involved the charging of an excessive fee, commingling of client funds, and dishonesty, and war-

ranted nine-month suspension from practice of law, with reinstatement conditioned on attorney's payment of restitution to client, and completion of a continuing legal education course on professional responsibility. In re Bernstein, 2001, 774 A.2d 309. Attorney And Client ⇨ 44(1); Attorney And Client ⇨ 44(2); Attorney And Client ⇨ 59.13(3); Attorney And Client ⇨ 61

Failure to respond to Bar Counsel's inquiries about ethical complaint, failure to comply with order of Board on Professional Responsibility requiring response to complaint, and indefinite suspension in another jurisdiction, warranted thirty-day suspension. In re Freed, 2001, 773 A.2d 436. Attorney And Client ⇨ 59.13(3)

Plea of guilty to making false statements to Immigration and Naturalization Service in connection with representation of client applying to become naturalized citizen warranted one year suspension. In re Bowser, 2001, 771 A.2d 1002. Attorney And Client ⇨ 59.13(3)

3.5. — Unauthorized practice, grounds for discipline

Generally in cases involving unauthorized practice violations, a sanction as severe as disbarment or lengthy suspension has been imposed only when the unauthorized practice violation is accompanied by violations that would, in themselves, warrant those more severe sanctions. In re Lebowitz, 2008, 944 A.2d 444. Attorney And Client ⇨ 59.13(3); Attorney And Client ⇨ 59.14(1)

4. — Criminal conduct, grounds for discipline

Suspension from practice of law for six months was appropriate sanction following attorney's guilty plea to misdemeanor insurance fraud; facts did not indicate that crime was one of moral turpitude, and therefore, disbarment was not required. In re Wiss, 2008, 948 A.2d 1179. Attorney And Client ⇨ 59.13(5)

Six month suspension was warranted for conduct of attorney who pled guilty to one misdemeanor count of unlawful receipt of compensation with intent to defeat purposes of United States Department of Housing and Urban Development (HUD) in violation of federal statute, even though the conduct did not involve moral turpitude, as it violated professional conduct rules governing fairness to opposing party and generally defining misconduct. In re Abrahamson, 2004, 852 A.2d 949. Attorney And Client ⇨ 59.13(5)

Attorney's conduct in committing misdemeanor offense of drawing a check of less than \$200 on insufficient funds, with intent to defraud, and failing to report conviction and public reprimand by bar in other jurisdiction to Bar Counsel, warranted 30-day suspension, in light of fact that offense did not constitute crime involving moral turpitude. In re Powell, 2003, 836 A.2d 579. Attorney And Client ⇨ 59.13(5)

A lawyer's actions do not have to reach the level of criminal conduct before disciplinary action may

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be taken. In *re Uchendu*, 2002, 812 A.2d 933. Attorney And Client ⇨ 37.1

5. — Commingling of funds, grounds for discipline

Attorney failed to keep complete records of her escrow account, in violation of the Rules of Professional Responsibility; attorney deposited check drawn on her operating account into her escrow account and labeled the check as attorney fees but failed to indicate which client's fees that the money represented and why she was putting attorney fees into her escrow account, attorney failed to indicate on deposit slip for escrow account why she was withdrawing some money from the gross deposit and whose money she was taking, attorney paid tax claim for client out of her escrow account in an amount in excess of deposit she made into the account on client's behalf, and when client complained that attorney had not returned remainder of his money in escrow account attorney told Bar Counsel she was unable to locate her records. In *re Edwards*, 2010, 990 A.2d 501, as amended, certiorari denied 131 S.Ct. 2942, 180 L.Ed.2d 227, rehearing denied 132 S.Ct. 57, 180 L.Ed.2d 925. Attorney And Client ⇨ 44(2)

In reciprocal disciplinary action, six month suspension, with requirement that attorney prove fitness as a condition of reinstatement, was appropriate sanction for attorney who was suspended for 6 months in Florida because attorney, who was made a co-trustee of an estate, had failed to deposit certain insurance proceeds into a segregated escrow account and failed to ensure that his co-trustee properly and prudently used trust monies for the benefit of the children of the settlor, who later died. In *re Miller*, 2006, 896 A.2d 920. Attorney And Client ⇨ 59.18

Attorney's misappropriation of commingled funds was reckless rather than negligent, and, thus, warranted disbarment, despite claim of faulty record-keeping, and that account had sufficient funds when checks were presented; attorney allowed account to drop several hundred dollars below amount held for client's benefit for weeks at a time, attorney's frequent account inquiries indicated he knew that balance would not cover outstanding checks, sufficiency of funds at time of presentment was irrelevant, and no mitigating factors would support lesser sanction. In *re Smith*, 2003, 817 A.2d 196. Attorney And Client ⇨ 59.14(2)

The rule against commingling requires that a lawyer maintain a separate escrow account for entrusted funds of a client or third party. In *re Asher*, 2001, 772 A.2d 1161. Attorney And Client ⇨ 44(2)

6. — Protection or loyalty to client, grounds for discipline

Allegations by plaintiff that her sister's attorney, as principal of law firm, communicated to bank a number of false and deceptive statements regarding the plaintiff's lack of interest in jewelry held in safe deposit box with the objective of permitting sister to gain unilateral access to the safe deposit

box, and therefore accorded the sister the ability to wrongfully exercise dominion and control over jewelry held in the safe deposit box, which allegedly was owned by both plaintiff and the sister, stated claim against law firm for aiding and abetting conversion, under District of Columbia law. *Baker v. Gurfein*, 2010, 744 F.Supp.2d 311. Attorney And Client ⇨ 26

Evidence was sufficient to establish that attorney, who owned title company and practiced in real estate and probate law, violated rule of professional conduct requiring skill and care, when he undertook to represent borrower and initiated probate proceeding after it was discovered that borrower in transaction title company was contacted to close did not have title to property and that property instead belonged to unprobated estate of borrower's deceased mother-in-law; attorney filed facially defective renunciation forms for borrower's son and her deceased husband's brother, attorney provided inconsistent testimony regarding his decision to use forms, deputy registrar of titles denied advising attorney's legal assistant to use forms, attorney only attempted to probate deceased mother-in-law's estate and not deceased husband's estate, and attorney failed to properly advise borrower regarding the factual and legal issues in transferring title to her. In *re Evans*, 2006, 902 A.2d 56. Attorney And Client ⇨ 44(1)

Attorney's conduct in obtaining loans totaling over \$27,000.00 from an elderly, uneducated client of very little means and then failing to reimburse client for the loans violated the professional rules since attorney engaged in prohibited conflicts of interest and engaged in dishonest conduct. In *re Austin*, 2004, 858 A.2d 969. Attorney And Client ⇨ 44(1)

Suspension for 30 days was appropriate disciplinary sanction for attorney's failure to perform conflicts check before representing new client and failure to obtain written consents from the affected parties, or to withdraw, once he learned of the conflict. In *re Butterfield*, 2004, 851 A.2d 513. Attorney And Client ⇨ 59.13(3)

Conduct of attorney, who was partner in law firm, in failing to exercise proper supervisory responsibility over actions by associate under his supervision, warranted suspension from practice of law for 30 days; disciplinary proceeding arose after attorney's law firm, which represented two individuals, took action favoring one client without notifying other client or safeguarding his interests, and although attorney had practiced law for more than 30 years without discipline and cooperated with investigation, attorney conceded that he did not appropriately consult with his client, and did not utilize system of oversight over associates. In *re Cohen*, 2004, 847 A.2d 1162. Attorney And Client ⇨ 59.13(3)

Attorney who represented clients in potential class action against shampoo manufacturer violated bar rule requiring that a lawyer keep client reasonably informed of the status of a matter by entering into a settlement under which manufacturer would pay attorney and co-counsel \$225,000

in return for dropping case and agreeing not to disclose to clients the fact and amount of that payment, and also by failing to disclose to clients that the settlement agreement was not a release of their claims. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 44(1)

Attorney who represented clients in potential class action against shampoo manufacturer violated bar rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation by entering into a settlement under which manufacturer would pay attorney and co-counsel \$225,000 in fees and expenses in return for their agreement not to disclose to clients the fact and amount of that payment and not to represent current or future clients on related claims against manufacturer; attorney's unsuccessful attempt to persuade manufacturer to disclose fee did not negate dishonest state of mind. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 44(1)

Attorney who represented clients in potential class action against shampoo manufacturer violated bar rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation by failing to inform clients that their claims were not released by a settlement agreement under which manufacturer would pay \$225,000 to attorney and co-counsel in return for their agreement not to represent current or future clients on similar claims against manufacturer and not to disclose fact and amount of settlement to clients. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 44(1)

Attorney's statement to client, that he did not represent her during settlement talks with shampoo manufacturer, violated bar rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation, where first sentence of contingent fee agreement in connection with potential class action against manufacturer stated that client was retaining attorney and co-counsel to perform enumerated legal services, and attorney also sent letter to client clearly stating that he continued to represent her in would-be class action. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 44(1)

Attorney who represented clients in potential class action against shampoo manufacturer, and who entered into settlement under which clients would receive full purchase price refunds but would not release their claims, and attorney and co-counsel would be paid \$225,000 in fees and expenses in return for agreeing not to represent present or future clients on similar claims against manufacturer and not to disclose fact and amount of that payment to clients, violated bar rules requiring that a lawyer abide by client's decision regarding an offer of settlement. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 44(1)

Disciplinary rules requiring that a lawyer abide by a client's decision whether to accept an offer of settlement, and prohibiting a lawyer from entering

a settlement that includes a restriction of lawyer's right to practice, envelop agreements at the outer fringes of what constitutes a "settlement." In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 37.1; Attorney And Client ⇨ 44(1)

Attorney violated disciplinary rule requiring that a lawyer take timely steps in terminating a representation to protect a client's interests, such as surrendering papers to which client is entitled, by entering settlement with shampoo manufacturer under which attorney and co-counsel would be paid \$225,000 in return for dropping case and agreeing, in part, not to reveal any information obtained as a result of attorney's work in relation to the litigation; fact that no clients were in fact denied their files after execution of settlement was not determinative. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 44(1)

Attorney engaged in misconduct by continuing to represent clients in potential class action against shampoo manufacturer while negotiating a secret fee agreement with manufacturer that violated multiple Rules of Professional Conduct. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 44(1)

One-year suspension was warranted for attorney who engaged in professional misconduct, while representing clients in potential class action against shampoo manufacturer, by entering settlement under which manufacturer would make full refunds to clients and would pay attorney and co-counsel \$225,000 in fees and expenses if attorney and co-counsel agreed to drop case and not to disclose fact and amount of that payment to clients; while violations were serious and of a type that could cause serious public doubt about integrity of lawyers, there were mitigating circumstances including lack of a prior disciplinary record and attorney's extensive pro bono work. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 59.13(3)

Clients must be able to rely unquestioningly on the truthfulness of their counsel. In re Bernstein, 2001, 774 A.2d 309. Attorney And Client ⇨ 106

An attorney's concealment or suppression of a material fact from his client is as fraudulent as a positive direct misrepresentation. In re Bernstein, 2001, 774 A.2d 309. Attorney And Client ⇨ 114

Under Virginia disciplinary rule, attorney committed misconduct of revealing clients' secrets by stating, in support of motion to withdraw as counsel, that clients made misrepresentations to him and by attaching letter to motion revealing that a \$90,000 demand from opposing party would be reasonable. In re Gonzalez, 2001, 773 A.2d 1026. Attorney And Client ⇨ 44(1)

An attorney owes a fiduciary duty to his client and must serve the client's interests with the utmost loyalty and devotion. In re Gonzalez, 2001, 773 A.2d 1026. Attorney And Client ⇨ 105.5; Attorney And Client ⇨ 113

Informal admonition was appropriate sanction for attorney's misconduct, under Virginia disciplinary rule, of revealing clients' secrets in conjunction with motion to withdraw as counsel. In re Gonzalez, 2001, 773 A.2d 1026. Attorney And Client ⇨ 59.9

6.5. — Conflict of interest, grounds for discipline

Thirty-day suspension, stayed in favor of probation, as opposed to informal admonition, was appropriate sanction for attorney who incompetently represented interests of client, who was aged family friend, and engaged in a conflict of interest without full disclosure when he drafted her will; occurrence of attorney's ethical violations in a personal context outside his usual practice as assistant general counsel at the Department of Consumer and Regulatory Affairs was a mitigating, rather than an aggravating, factor, and incompetent representation and conflicts of interest were significant breaches. In re Long, 2006, 902 A.2d 1168. Attorney And Client ⇨ 59.17(1)

Attorney, who owned title company and practiced in probate and real estate law, violated rule of professional conduct regarding conflict of interest by not personally disclosing potential conflict of interest and obtaining a waiver of the conflict, when he undertook to represent borrower in probate proceeding after it was discovered that borrower in real estate transaction that his title company was contacted to close did not have title to property and that property instead belonged to unprobated estate of borrower's deceased mother-in-law; though attorney claimed he thought his associate made the necessary disclosure, attorney had an independent duty to fully and adequately disclose the conflict and to make sure that borrower knowingly waived the conflict, and attorney acknowledged he did not personally disclose to borrower that he owned title company or obtain her informed consent to the potentially conflicted representation. In re Evans, 2006, 902 A.2d 56. Attorney And Client ⇨ 44(1)

Attorney's continued representation of client, after client had filed motion to withdraw his guilty plea in prosecution in Maryland federal court, was materially limited by attorney's own interests, so that attorney's failure to withdraw from the representation violated Maryland professional conduct rule on conflicts of interest, which was applicable in District of Columbia disciplinary proceeding; client's motion alleged, as grounds for withdrawal of client's guilty plea, that attorney had coerced client into pleading guilty and that attorney had provided ineffective assistance of counsel with respect to the plea, and attorney could not argue motion to withdraw plea without possibly admitting serious ethical violations and subjecting himself to possible liability for malpractice. In re Ponds, 2005, 888 A.2d 234. Attorney And Client ⇨ 44(1)

6.7. — Unreasonable fees, grounds for discipline

Attorney's decision to increase the hours billed to two clients in order to charge a premium that he was not entitled to take under clients' engagement letters amounted to only negligent conduct, as opposed to reckless conduct, and thus, attorney's actions did not violate rule of professional conduct governing misconduct involving dishonesty, fraud, deceit, or misrepresentation; attorney's law firm had recently changed its billing policies to allow for premium charges, the bills at issue were sent out shortly after the firm adopted its new form engagement letter, two firm attorneys testified that these circumstances could have caused confusion, and attorney was responsible for an unusually large number of bills totaling millions of dollars. In re Romansky, 2007, 938 A.2d 733. Attorney And Client ⇨ 44(2)

Rule of professional conduct regarding the charging of unreasonable attorney fees can be violated by the act of charging an unreasonable fee without regard to whether the fee is collected. In re Cleaver-Bascombe, 2006, 892 A.2d 396. Attorney And Client ⇨ 44(2)

7. — Deception of court or obstruction of administration of justice, grounds for discipline

Attorney knowingly failed to respond reasonably to a lawful demand for information from a disciplinary authority in violation of the Rules of Professional Conduct by delaying her responses to Bar Counsel's letters of inquiry mailed after client had complained that attorney did not return his money held in attorney's escrow account; though attorney's initial delay in responding was justified in light of health problems and the relocation of her office, attorney first informed Bar Counsel that she had sought help in reviewing her files three months after receiving the initial letters, attorney did not provide a response when Bar Counsel made a motion to Board of Professional Responsibility for an order to compel a response, attorney did not provide a response within ten days after Board granted motion, and attorney only began preparing her response after Bar Counsel filed a specification of charges. In re Edwards, 2010, 990 A.2d 501, as amended, certiorari denied 131 S.Ct. 2942, 180 L.Ed.2d 227, rehearing denied 132 S.Ct. 57, 180 L.Ed.2d 925. Attorney And Client ⇨ 42

Lying about service of counterclaim on pro se litigant warranted reciprocal discipline of 30-day suspension as discipline substantially different from original admonition, although attorney had no prior disciplinary history; conduct involved serious acts of dishonesty for which 30-day suspension was appropriate, and court had not previously imposed lesser sanction than suspension for comparable conduct. In re Amberly, 2009, 974 A.2d 270. Attorney And Client ⇨ 59.18

Suspension for 10 days was appropriate reciprocal discipline for attorney's misconduct in violating of Florida Rules of Professional Conduct regarding

concealing evidence, failure to report to demand for information from disciplinary authority, dishonesty, and failure to respond in writing to a bar inquiry, where attorney was suspended from the practice of law for 10 days in Florida. In re Granoski, 2006, 911 A.2d 1225. Attorney And Client ⇨ 59.18

Evidence was sufficient to establish that attorney, who owned title company and practiced in probate and real estate law, violated rule of professional conduct barring conduct that seriously interfered with the administration of justice, in connection with his representation of borrower in probate proceeding after it was discovered that borrower in real estate transaction title company was contacted to close did not have title to property; attorney testified probate estate was opened to have the "appropriate people appointed" to sign for the loan, there was evidence that attorney took repeated shortcuts in probate proceeding to transfer title to borrower; attorney did not attend probate hearing regarding forged documents obtained by borrower to procure title, attorney failed to either withdraw from representation or ensure borrower complied with court order to provide an accounting, and attorney accepted legal fees from estate without prior court approval. In re Evans, 2006, 902 A.2d 56. Attorney And Client ⇨ 42

Evidence was sufficient to establish that attorney, who owned title company and practiced in real estate and probate law, violated rule of professional conduct requiring competent representation, when he undertook to represent borrower and initiated probate proceeding after it was discovered that borrower in transaction title company was contacted to close did not have title to property and that property instead belonged to unprobated estate of borrower's deceased mother-in-law; attorney filed facially defective renunciation forms for borrower's son and her deceased husband's brother, attorney provided inconsistent testimony regarding his decision to use forms, deputy registrar of titles denied advising attorney's legal assistant to use forms, and attorney failed to properly advise borrower regarding the factual and legal complications involved in transferring title to her. In re Evans, 2006, 902 A.2d 56. Attorney And Client ⇨ 44(1)

Thirty-day suspension was appropriate sanction for attorney who brought frivolous lawsuit and engaged in conduct that seriously interfered with the administration of justice; attorney filed an unfounded defamation suit against individual who had made a complaint to Bar Counsel, and by doing so, attorney indirectly interfered with Bar Counsel's ongoing investigation of the ethical complaint, and this was not attorney's first ethical infraction. In re Spikes, 2005, 881 A.2d 1118. Attorney And Client ⇨ 59.13(3)

Courts use three-pronged analysis to determine whether an attorney has engaged in conduct which interferes with the administration of justice: (1) conduct must be improper, and it may be improper because it violates a specific statute, court rule or procedure; (2) the conduct itself must bear directly

upon the judicial process (i.e., the administration of justice) with respect to an identifiable case or tribunal; and (3) the attorney's conduct must taint the judicial process in more than a de minimis way, that is, at least potentially impact upon the process to a serious and adverse degree. In re Spikes, 2005, 881 A.2d 1118. Attorney And Client ⇨ 42

Attorney's persistence in maintaining frivolous lawsuit, including an appeal, seriously interfered with the administration of justice and violated rule prohibiting attorneys from engaging in conduct that seriously interfered with the administration of justice. In re Spikes, 2005, 881 A.2d 1118. Attorney And Client ⇨ 42

In the face of consistent and clear case law holding that an absolute privilege attached to complaints made to Bar Counsel, reasonable lawyer in attorney's position would have easily concluded that attorney's defamation lawsuit against individual who made complaint to the Office of Bar Counsel concerning attorney's behavior was meritless, and by bringing meritless defamation suit, attorney violated rule providing that lawyer shall not bring a proceeding unless there is a basis for doing so that is not frivolous. In re Spikes, 2005, 881 A.2d 1118. Attorney And Client ⇨ 42

Attorney's failure to respond to Bar Counsel's letters during investigation of disciplinary complaint filed against him, regardless of whether letters were mailed to attorney's address, served by messenger, sent by certified mail, or transmitted by fax, violated professional rules governing failure to respond to disciplinary authority, serious interference with administration of justice, and failure to comply with order of Board. In re Kaufman, 2005, 878 A.2d 1187. Attorney And Client ⇨ 42

Evidence that actions undertaken by attorney in bankruptcy proceedings were substantively frivolous and interposed for purposes of delay was sufficient to support finding, in attorney disciplinary proceeding, that attorney improperly burdened the administration of justice; undisputed evidence established that Bankruptcy Court twice sanctioned attorney personally as result of his filings in that court, attorney acknowledged that his original clients lacked standing to file adversary action in bankruptcy proceedings, and attorney continued adverse action filed in another party's name even after such other party categorically told him to stop. In re Thyden, 2005, 877 A.2d 129. Attorney And Client ⇨ 42

Attorney's conduct in making late submission, to Superior Court, of Criminal Justice Act (CJA) voucher form for compensation for representing complaining witness in attempted-murder case, and in claiming fees substantially above statutory limit without providing supporting information to court, did not seriously interfere with administration of justice, in violation of professional conduct rules. In re Hallmark, 2003, 831 A.2d 366. Attorney And Client ⇨ 42

In order to violate the rule prohibiting attorney from seriously interfering with administration of

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justice, an attorney's conduct must be improper; it must bear directly upon the judicial process with respect to an identifiable case or tribunal; and the attorney's conduct must taint the judicial process in more than a de minimis way. In *re Uchendu*, 2002, 812 A.2d 933. Attorney And Client ⇨ 42

Attorney's submission to Probate Division of documents containing false signatures and defective notarizations violated rule prohibiting attorney from seriously interfering with administration of justice. In *re Uchendu*, 2002, 812 A.2d 933. Attorney And Client ⇨ 42

Attorney's making false statements to cover up the fact that she had attempted to eavesdrop on testimony in violation of judge's sequestration order warranted 30-day suspension from the practice of law. In *re Owens*, 2002, 806 A.2d 1230. Attorney And Client ⇨ 59.13(3)

Sufficient evidence supported board of professional responsibility's determination that lawyer made false statements to court and opposing counsel regarding whether he represented client as of date of hearing at which client allegedly committed perjury; although client did not tender a retainer until after hearing, client's testimony indicated that lawyer advised her of the steps necessary to obtain a protective order and appeared with her in court for the hearing. In *re Corizzi*, 2002, 803 A.2d 438. Attorney And Client ⇨ 53(2)

Attorney's conduct in making misrepresentations to the federal appellate court regarding his reasons for failing to meet that court's deadlines was conduct of a dishonest character, in violation of disciplinary rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation. In *re Balsamo*, 2001, 780 A.2d 255. Attorney And Client ⇨ 42

To establish a violation of the professional responsibility rule prohibiting interference with the administration of justice, Bar Counsel must make a three-part showing: first, the conduct must be improper, second, the conduct itself must bear directly upon the judicial process with respect to an identifiable case or tribunal, and third, the attorney's conduct must taint the judicial process in more than a de minimis way, that is, it must at least potentially impact upon the process to a serious and adverse degree. In *re Travers*, 2000, 764 A.2d 242. Attorney And Client ⇨ 42

8. — Falsification or alteration of records or papers, grounds for discipline

Evidence was sufficient to support finding of Board of Professional Responsibility that attorney committed perjury by giving knowingly false testimony to Hearing Committee, in lawyer disciplinary proceeding, concerning whether she had in fact made a jail visit to client as indicated on falsified timekeeping voucher that she submitted to court for compensation for services in extradition case; evidence showed that attorney did not meet with client at the jail on the date that she indicated on her voucher, yet attorney maintained in her initial testimony that she had. In *re Cleaver-Bascombe*, 2010, 986 A.2d 1191. Attorney And Client ⇨ 42

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Suspension for 18 months, with requirement that after resumption of practice of law the attorney attend a course on professional responsibility, was warranted, as non-identical reciprocal discipline in District of Columbia following attorney's disbarment in Maryland, with respect to attorney's misconduct, as an associate attorney, in falsely representing to other attorneys at law firm that he had filed an appeal in a client's case and in creating falsified filing stamps on papers to make it appear that those papers had been filed in court, after attorney had failed to convey to client the law firm's offer to represent the client in the appeal for a reduced fee, which offer the law firm intended as a response to client's indication that he did not want to appeal because he did not want to incur additional fees and expenses. In *re Guberman*, 2009, 978 A.2d 200. Attorney And Client ⇨ 59.18

Attorney's forgery of signature on document purporting to be agreement between law firm for which attorney was a partner and state of Arkansas to enter into contingency fee agreement with respect to underlying natural resource damage litigation constituted violation of rule of professional conduct prohibiting an attorney from engaging in criminal act that reflects adversely on attorney's honesty, trustworthiness, or fitness as an attorney in other respects. In *re Slaughter*, 2007, 929 A.2d 433. Attorney And Client ⇨ 39

In reciprocal attorney disciplinary action, public censure was appropriate sanction for attorney who was reprimanded in New Jersey for filing false statements with the Rent Control Office in order to obtain illegal rents; there was no miscarriage of justice in the New Jersey proceedings as the record revealed that attorney was not denied due process and attorney was represented by counsel when he stipulated to the misconduct and discipline. In *re Scinto*, 2006, 896 A.2d 230. Attorney And Client ⇨ 59.18

Attorney violated rule of professional conduct regarding the making of false statements of fact or law to a tribunal when she submitted a Criminal Justice Act voucher for payment of attorney fees for work that she performed for indigent client that she knew contained charges for work that was not performed. In *re Cleaver-Bascombe*, 2006, 892 A.2d 396. Attorney And Client ⇨ 42

Attorney's submission of at least 27 false vouchers for work allegedly performed pursuant to appointment under Criminal Justice Act (CJA) warranted 90-day suspension from practice of law. In *re Mendoza*, 2005, 885 A.2d 317. Attorney And Client ⇨ 59.13(3)

Attorney's submission of vouchers for work allegedly performed pursuant to appointment under Criminal Justice Act (CJA), which vouchers were not submitted to court for payment or did not reflect what was later submitted to court for payment, violated professional conduct rule prohibiting dishonesty, fraud, deceit or misrepresentation. In *re Mendoza*, 2005, 885 A.2d 317. Attorney And Client ⇨ 38

Attorney's conduct of signing names of co-counsel to document without noting in every instance that he was executing document on their behalf violated rule prohibiting attorney from engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation. In re Howard, 2005, 879 A.2d 681. Attorney And Client ⇨ 41

Suspension of thirty days was warranted for attorney who submitted to Probate Division verified documents that he had signed with clients' names and had improperly notarized. In re Uchendu, 2002, 812 A.2d 933. Attorney And Client ⇨ 59.13(3)

Attorney's submission to Probate Division of documents that he had notarized after signing his clients' names violated rules prohibiting making a false statement of material fact or law to a tribunal and prohibiting attorney from engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation, even if the documents were substantively accurate and attorney had no intent to defraud his clients. In re Uchendu, 2002, 812 A.2d 933. Attorney And Client ⇨ 42

Attorney's submission to Probate Division of documents that were signed by him without initials or other indication that his clients were not the actual signatories violated rules prohibiting making a false statement of material fact or law to a tribunal and prohibiting attorney from engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation, even if the documents were substantively accurate and attorney had no intent to defraud his clients. In re Uchendu, 2002, 812 A.2d 933. Attorney And Client ⇨ 42

Former client's forging of documents in attempt to bolster its underlying suit for breach of contract, did not bar client from bringing malpractice action against attorneys, where client's wrongdoing was not central to damages it was seeking. Breezevale Ltd. v. Dickinson, 2001, 783 A.2d 573. Attorney And Client ⇨ 105.5

8.5. — Failure to notify, grounds for discipline

A 30-day suspension stayed in favor of one-year of unsupervised probation was warranted for attorney who failed to inform client of dismissal of complaint and failed to represent the interests of her client, who was an incapacitated ward. In re Gaines, 2010, 5 A.3d 1026. Attorney And Client ⇨ 59.17(1)

Attorney's conduct in failing to notify client of pending immigration hearing, failing to attend the hearing resulting in entry of an in absentia deportation order, and failing to take any remedial actions, which violated rules of professional conduct regarding diligent representation and keeping client informed, warranted public censure. In re Geno, 2010, 997 A.2d 692. Attorney And Client ⇨ 44(1); Attorney And Client ⇨ 59.8(1)

Client's father who provided a flat fee to attorney to represent his son in a homicide case did not provide "informed consent" to attorney's treating the fee as the attorney's property, as required by the Rules of Professional Conduct, though client's

father understood the fee was the attorney's property, where there was no discussion between the attorney and client's father regarding how the flat fee was to be treated. In re Mance, 2009, 980 A.2d 1196, as amended. Attorney And Client ⇨ 137

Public censure was appropriate sanction for attorney's violation of rules of professional conduct, including rules requiring attorneys to provide competent, zealous, and diligent representation, and to keep client reasonably informed based on his representation of client in personal injury matter that was approaching deadline to file suit under statute of limitations, notwithstanding his lack of disciplinary history and his career as an officer in the Marine Corps. In re Avery, 2007, 926 A.2d 719. Attorney And Client ⇨ 59.8(1)

Evidence that attorney failed to inform client of letter received from opposing party in adversary action in bankruptcy court, requesting settlement discussions with client, was sufficient to support finding, in attorney disciplinary proceeding, that attorney failed promptly to inform client of settlement offer, despite attorney's claimed belief that letter was not good faith offer of settlement, but rather attempt by opposing party to drive wedge between himself and his client. In re Thyden, 2005, 877 A.2d 129. Attorney And Client ⇨ 44(1)

Attorney's failure to pay provider of client's pain reduction device from proceeds of money judgment in personal injury case was intentional rather than inadvertent, for purposes of professional conduct rule requiring an attorney to promptly notify a third party of the attorney's receipt of funds in which the third party has an interest; client was attorney's wife, and attorney was aware of client's indebtedness to provider of device. In re Mitchell, 2003, 822 A.2d 1106. Attorney And Client ⇨ 44(2)

Ninety-day suspension, rather than 30-day suspension, was warranted as disciplinary sanction for attorney's conduct in failing to notify provider of pain reduction device to client of attorney's receipt of money judgment in personal injury case and attorney's misrepresentations to provider; such conduct occurred over period of almost four years, and attorney failed to pay provider until more than two years after he was notified of Bar Counsel's action against him. In re Mitchell, 2003, 822 A.2d 1106. Attorney And Client ⇨ 59.13(3)

9. — Misappropriation and failure to account, grounds for discipline

Doctrine of contributory negligence did not apply to bar legal malpractice claim against former attorney for testator's estate by personal representatives of estate, where it was unclear whether failure of estate to file timely income tax returns was due to a lack of diligence or dereliction of duty on part of the personal representatives, who were also beneficiaries of estate, or, rather, due to personal representatives' reasonable reliance on erroneous advice of estate's former attorney, nor was it clear as to whether, or how, personal representatives and estate's former attorney, who was also a former co-personal representative of estate, had

allocated the various duties of a personal representative. *Pair v. Queen*, 2010, 2 A.3d 1063. Attorney And Client ⇨ 129(1)

Two-year suspension, with a fitness requirement for reinstatement, would be imposed upon attorney who negligently misappropriated settlement funds in his trust account that belonged to one client, failed to keep records sufficient to account for his handling of another client's personal injury protection (PIP) checks or the assigned claims of that client's medical services providers, failed to promptly notify and pay that client's medical providers from settlement proceeds, and made false statements in the course of Bar Counsel's investigation into the handling of funds in the matter involving the second client. *In re Boykins*, 2010, 999 A.2d 166. Attorney And Client ⇨ 59.13(7); Attorney And Client ⇨ 59.13(9)

Attorney's misappropriation of client's funds deposited in her escrow account, by allowing balance of escrow account to fall below the amount that client had entrusted with her and by failing to return the remaining \$1,000 of the original \$2,000 amount, was intentional rather than negligent, for purposes of determining whether attorney's conduct warranted disbarment or a lesser sanction; attorney not only allowed the balance in her escrow account to drop below the amount client entrusted, attorney also used client's money for her own purposes, when client asked for the return of \$1,000 of his original \$2,000 attorney was forced to deposit additional money into escrow account in order to cover \$1,000 check to client, and misappropriation was not the result of sloppy billing. *In re Edwards*, 2010, 990 A.2d 501, as amended, certiorari denied 131 S.Ct. 2942, 180 L.Ed.2d 227, rehearing denied 132 S.Ct. 57, 180 L.Ed.2d 925. Attorney And Client ⇨ 59.5(4)

Evidence was sufficient to establish, by clear and convincing proof at hearing in attorney disciplinary proceeding regarding whether attorney had misappropriated client's funds, that \$2,000 cashier's check client delivered to attorney during client's bankruptcy proceeding was entrusted as client's property rather than for attorney fees, and that attorney knew that such was the case; client testified that he entrusted attorney with the check in order to forestall foreclosure procedures on his condominium or to settle arrears on his mortgage payments, attorney deposited the check into her escrow account, attorney did not provide client with a receipt crediting him with payment of fees, when client requested the return of \$1,000 from such amount attorney wrote client a check in the sum of \$1,000 from escrow account, and in initial letter to Bar Counsel attorney stated that client had provided the funds to settle arrears on his mortgage. *In re Edwards*, 2010, 990 A.2d 501, as amended, certiorari denied 131 S.Ct. 2942, 180 L.Ed.2d 227, rehearing denied 132 S.Ct. 57, 180 L.Ed.2d 925. Attorney And Client ⇨ 53(2)

Five-year suspension from the practice of law, with a fitness requirement for reinstatement, was warranted, in reciprocal discipline case; Massachusetts indefinitely suspended attorney from the

practice of law after he intentionally and fraudulently caused four checks from his employer to be converted for his personal use, attorney made full restitution to his employer, and five year suspension was the functional equivalent of Massachusetts's indefinite suspension since an attorney indefinitely suspended from the practice of law in Massachusetts could apply for readmission after five years. *In re Weekes*, 2010, 990 A.2d 470. Attorney And Client ⇨ 59.18

Disbarment was warranted for attorney who had recklessly or intentionally misappropriated client's settlement funds that attorney falsely represented had been used to pay client's medical providers, where attorney when he misappropriated funds was aware he was being investigated by Bar Counsel for similar conduct with another client, attorney had significant previous sanctions for ethical violations, including the prior suspension, a reprimand and an informal admonition, and attorney was less than candid during Bar Counsel's investigation. *In re Anderson*, 2009, 979 A.2d 1206. Attorney And Client ⇨ 59.14(2)

Single instance of misappropriation of a modest sum of client funds warranted disbarment. *In re Bach*, 2009, 966 A.2d 350. Attorney And Client ⇨ 59.14(2)

Arizona disciplinary proceeding did not find that attorney's misappropriations were either intentional or reckless so as to warrant the greater sanction of disbarment; rather, the identical reciprocal discipline of suspension was warranted for attorney's misconduct in Arizona. *In re Reed*, 2008, 950 A.2d 35. Attorney And Client ⇨ 59.18

Evidence was sufficient that attorney consciously and knowingly failed to pay workers' compensation carrier full amount of statutory lien on client's settlement with tortfeasor for more than four years, so as to support Board on Professional Responsibility's reckless misappropriation finding; payment was finally forthcoming only after the filing of a lawsuit and the initiation of a disciplinary proceeding, even though attorney had access long before then to money he could have used to pay carrier, and attorney's testimony showed that the primary reason for his delay in paying was his belief that carrier was at fault, not any inability on his part to make the payment. *In re Cloud*, 2007, 939 A.2d 653, as amended, rehearing granted. Attorney And Client ⇨ 44(2)

Attorney's failure to maintain financial records relating to his escrow account did not amount to reckless misconduct, where ledger was lost inadvertently during an office move. *In re Cloud*, 2007, 939 A.2d 653, as amended, rehearing granted. Attorney And Client ⇨ 44(2)

Attorney's failure to pay workers' compensation carrier full amount of statutory lien on client's settlement with tortfeasor, after misunderstanding about amount owed was corrected, constituted reckless misappropriation of client funds, where attorney did not pay carrier in full until more than four years later and only after formal disciplinary proceedings had been brought and carrier filed

lawsuit against attorney. In re Cloud, 2007, 939 A.2d 653, as amended, rehearing granted. Attorney And Client ⇨ 44(2)

Attorney's losing of cashier's check that was made out to workers' compensation carrier and paid from client's settlement with tortfeasor, did not constitute reckless misappropriation; inference of reckless conduct could not be based simply on the check's disappearance, and attorney did not display the conscious indifference necessary for a finding of recklessness. In re Cloud, 2007, 939 A.2d 653, as amended, rehearing granted. Attorney And Client ⇨ 44(2)

Attorney's conduct in keeping part of client funds that were owed to workers' compensation carrier in an operating account, rather than in escrow account, was not reckless misappropriation of client funds; placing entrusted funds in an operating account instead of escrow account, but maintaining a balance sufficient to cover the funds, constituted commingling, such that attorney was guilty of simple negligence, in the absence of aggravating factors. In re Cloud, 2007, 939 A.2d 653, as amended, rehearing granted. Attorney And Client ⇨ 44(2)

In making the distinction between negligent and reckless misappropriation, to determine whether disbarment is warranted, the inquiry focuses on whether the lawyer handled the entrusted funds in a way that suggests the unauthorized use was inadvertent or the result of simple negligence, or in a way that reveals either an intent to treat the funds as the attorney's own or a conscious indifference to the consequences of his behavior. In re Cloud, 2007, 939 A.2d 653, as amended, rehearing granted. Attorney And Client ⇨ 59.14(2)

In assessing whether attorney's conduct in misappropriating client funds rose to the level of recklessness, as would warrant disbarment, the Court of Appeals would ascertain whether the attorney engaged in a pattern or course of conduct demonstrating an unacceptable disregard for the welfare of entrusted funds. In re Cloud, 2007, 939 A.2d 653, as amended, rehearing granted. Attorney And Client ⇨ 59.14(2)

When the evidence shows intentional or reckless misappropriation of client funds, disbarment is the appropriate sanction in nearly all cases, unless there are extraordinary circumstances that justify a lesser sanction. In re Cloud, 2007, 939 A.2d 653, as amended, rehearing granted. Attorney And Client ⇨ 59.14(2)

In general, misappropriation in violation of professional rules occurs when the balance in an attorney's bank account or accounts falls below the amount due to the client. In re Cloud, 2007, 939 A.2d 653, as amended, rehearing granted. Attorney And Client ⇨ 44(2)

Attorney's conduct, which included misappropriation of client funds, failure to maintain complete records, render appropriate accounts, or notify client of receipt of funds, failure to return any prepaid unearned fees to client until 13 years after representation ended, and failure to do any work

on behalf of client in connection with filing deed and related tax forms, or to notify client that he had not filed deed or prepared related tax form, violated rules of professional conduct, including rule governing safekeeping of client property, rule prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and rule requiring lawyers to represent client zealously and diligently within the bounds of the law. In re Brown, 2006, 912 A.2d 568. Attorney And Client ⇨ 44(1); Attorney And Client ⇨ 44(2)

Disbarment, stayed, and three years of probation subject to conditions imposed by the Board on Professional Responsibility, were appropriate sanctions for attorney's misconduct in misappropriating client's funds, when he used funds in client trust fund account for personal and business expenses, given mitigating circumstance of attorney's depression, and attorney's continuing treatment for the depression. In re Mooers, 2006, 910 A.2d 1046. Attorney And Client ⇨ 59.17(1)

Attorney's failure to keep appropriate trust account records, to notify and promptly pay third parties by failing to disburse funds to two providers after settling personal injury case, to supervise employees, to cooperate with disciplinary authority, and to comply with court order, and his interference with administration of justice, violated Rules of Professional Conduct and Bar Rule which required attorneys to safekeep client property and to take responsibility with respect to nonlawyer assistants and which prohibited engaging in conduct that seriously interfered with administration of justice. In re Toppelberg, 2006, 906 A.2d 881. Attorney And Client ⇨ 42; Attorney And Client ⇨ 44(2)

Evidence was sufficient to establish that attorney violated several rules of professional conduct, including misappropriation of entrusted funds and failure to keep complete records, failure on termination of representation to surrender property to which client was entitled, criminal act of dishonesty, and conduct involving dishonesty, fraud, deceit, or misrepresentation so as to warrant disbarment, surrender of client's property in his possession, and reinstatement to bar contingent on his having made full restitution to client. In re Rogers, 2006, 902 A.2d 103. Attorney And Client ⇨ 59.14(1); Attorney And Client ⇨ 59.14(2); Attorney And Client ⇨ 59.14(4)

Remand was necessary in attorney discipline case due to the Court of Appeals inability to reconcile satisfactorily the Board of Professional Responsibility's conclusion that attorney submitted a patently fraudulent voucher for attorney fees under the Criminal Justice Act with the Board's position that the hearing committee's findings did not support the conclusion that attorney presented false evidence or testimony; there would be a significant difference, for purposes of an appropriate sanction, between an attorney's deliberate fabrication of a claim and perjurious defense of it before the hearing committee and, on the other hand, her engaging, without an intent to defraud, in record-keeping so shoddy that it was the legal

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Note 9

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equivalent of dishonesty, but then presenting a legitimate defense without fabrication or perjury. In *re* Cleaver-Bascombe, 2006, 892 A.2d 396. Attorney And Client ⇨ 57

Misappropriation warrants disbarment, as attorney disciplinary sanction in District of Columbia. In *re* Zdravkovich, 2006, 891 A.2d 258. Attorney And Client ⇨ 59.14(2)

Attorney's violations of New Jersey's Rules of Professional Conduct warranted reciprocal and identical discipline of disbarment, where violations at issue comprised violations of comparable District of Columbia Rules of Professional Conduct, there was no miscarriage of justice in New Jersey proceedings, New Jersey proceedings established misconduct including misappropriation of client funds and dishonesty, disbarment was not so excessive as to be grossly unjust, and attorney filed no opposition to bar counsel's recommendation of disbarment. In *re* Gruber, 2005, 889 A.2d 991. Attorney And Client ⇨ 59.18

Attorney's conduct as court-appointed guardian and conservator of client and client's estate violated rules of professional conduct requiring competent representation, representation with requisite skill and care, and segregation of client funds, and prohibiting conduct seriously interfering with the administration of justice; attorney never posted bond as required by her appointment, failed to file any required accounts or reports with court, failed to file suggestion of death after client passed away, and distributed estate funds and paid herself legal fees without knowledge or approval of court. In *re* Soininen, 2005, 889 A.2d 294. Attorney And Client ⇨ 44(1); Attorney And Client ⇨ 44(2)

For purposes of determining appropriate disciplinary sanction against attorney whose failure to make reasonable efforts to ensure that conduct of non-attorney employee was compatible with her own professional obligations facilitated employee's embezzlement of client funds, attorney's conduct was not equivalent of negligent misappropriation of client funds; employee disobeyed attorney's instructions and violated attorney's trust, and attorney derived no personal gain or benefit from employee's misappropriation, but rather was heavily penalized by probate court in connection therewith. In *re* Cater, 2005, 887 A.2d 1. Attorney And Client ⇨ 44(2)

Misappropriation of client funds and dishonesty, if committed in the District of Columbia, justify disbarment. In *re* Smith, 2005, 886 A.2d 75. Attorney And Client ⇨ 59.14(2)

Attorney's misappropriation of funds by deducting attorney fees from funds entrusted to him despite dispute with client over manner in which funds were to be disbursed, compounded by repeated instances of failure to provide a timely accounting, and by signing, and then not disclosing that he had signed, a document without the client's authorization, conduct evincing dishonesty, warranted eighteen-month suspension. In *re* Midlen, 2005, 885 A.2d 1280, certiorari denied 127 S.Ct.

349, 549 U.S. 825, 166 L.Ed.2d 42. Attorney And Client ⇨ 59.13(4)

Attorney was negligent in misappropriating funds he should have segregated pending resolution of his dispute with client, rather than deducting fees before remitting to client balance of royalties received by attorney on client's behalf, but his actions did not reflect the heightened culpability for recklessness required for disbarment; attorney's entitlement to the fees he withdrew was not ultimately challenged and, indeed, client subsequently paid additional amounts to attorney to settle dispute. In *re* Midlen, 2005, 885 A.2d 1280, certiorari denied 127 S.Ct. 349, 549 U.S. 825, 166 L.Ed.2d 42. Attorney And Client ⇨ 44(2); Attorney And Client ⇨ 59.14(2)

A six-month suspension without a fitness requirement is the norm for attorneys who have committed negligent misappropriation of entrusted funds together with related violations. In *re* Edwards, 2005, 870 A.2d 90. Attorney And Client ⇨ 59.13(4)

Six month suspension was appropriate discipline for attorney who negligently misappropriated client funds, and in lieu of requiring attorney to demonstrate fitness as condition of reinstatement, attorney would be required to complete appropriate continuing legal education (CLE) and to allow practice monitor to oversee her record keeping, escrow accounts, and handling of client funds, and practice monitor's oversight would continue after attorney's reinstatement for six months as condition of probation; attorney had practiced law for over three decades without having been disciplined previously, she did not profit personally from her misconduct, and her clients were not harmed. In *re* Edwards, 2005, 870 A.2d 90. Attorney And Client ⇨ 59.13(4)

Disbarment was appropriate sanction for attorney who was hired by clients to help them administer individual's estate and who embezzled a total of at least \$73,850 from that estate, and as a condition of reinstatement, attorney would be directed to pay restitution to the estate; evidence showed a calculated pattern, over a period of time, of withdrawals from fiduciary accounts that were deposited into attorney's personal account, coupled with a deliberate effort to conceal this fact from Bar Counsel, as well as from the representatives and beneficiaries of the estate. In *re* Alexander, 2005, 865 A.2d 541. Attorney And Client ⇨ 59.14(2)

In virtually all cases of misappropriation, disbarment will be the only appropriate sanction for attorney unless it appears that the misconduct resulted from nothing more than simple negligence. In *re* Alexander, 2005, 865 A.2d 541. Attorney And Client ⇨ 59.14(2)

"Misappropriation," in context of attorney disciplinary action, is any unauthorized use of client's funds entrusted to a lawyer, including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom. In

re Alexander, 2005, 865 A.2d 541. Attorney And Client ⇨ 44(2)

Fraudulent misappropriation and theft by a fiduciary attorney warrants disbarment. In re Alexander, 2005, 865 A.2d 541. Attorney And Client ⇨ 59.14(2)

Attorney's intentional or reckless misappropriation of thousands of dollars entrusted to him warranted disbarment. In re Rivlin, 2004, 856 A.2d 1086. Attorney And Client ⇨ 59.14(2)

In virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence. In re Rivlin, 2004, 856 A.2d 1086. Attorney And Client ⇨ 59.14(2)

In reciprocal disciplinary case, six month suspension was appropriate sanction for attorney who was suspended for 30 days in Maryland for writing a check on a trust account which reduced its balance to about \$300 below the escrowed funds belonging to a third party; six-month suspension was a norm for negligent misappropriation of entrusted funds, and the greater sanction of a six month suspension was warranted because attorney's misconduct warranted substantially different discipline in the District of Columbia. In re McClain, 2004, 856 A.2d 589. Attorney And Client ⇨ 59.18

Attorney's prior disbarment for mishandling client funds required a harsher sanction than just public censure for his violation of rules regarding putting contingency fee arrangements in writing, delivering funds to a third-party claimant, and depositing funds in an escrow account, and thus, probation was warranted. In re Bettis, 2004, 855 A.2d 282. Attorney And Client ⇨ 59.17(1)

The discipline that normally is warranted for intentional misappropriation is disbarment. In re Laibstain, 2004, 841 A.2d 1259. Attorney And Client ⇨ 59.14(2)

Disbarment was appropriate disciplinary sanction for attorney's reckless misappropriation of client funds, involving two different clients. In re Thomas-Pinkney, 2004, 840 A.2d 700. Attorney And Client ⇨ 59.14(2)

Attorney's gross dereliction of duty to her clients and her misappropriation of funds warranted disbarment as reciprocal discipline. In re Ain, 2003, 837 A.2d 908. Attorney And Client ⇨ 59.18

Public censure was appropriate disciplinary sanction for attorney's failure to promptly notify client's physical therapist of attorney's receipt of settlement funds in personal injury action and failure to promptly pay therapist from those funds, and attorney's failure to keep complete records of disbursements of settlement funds. In re Clower, 2003, 831 A.2d 1030. Attorney And Client ⇨ 59.8(2)

Attorney, who instructed associate to bill time she spent on account of attorney's father to another client who paid a flat fee, was dishonest, in violation of ethics rule that precluded attorneys from engaging in acts of dishonesty, fraud, deceit or misrepresentation, even though client did not

suffer a financial loss from conduct. In re Roman-sky, 2003, 825 A.2d 311. Attorney And Client ⇨ 44(1)

Attorney's conduct, including reckless or intentional misappropriation of client funds in two different guardianship matters and apparent plagiarization of brief in representation of criminal defendant, warranted disbarment; attorney was not entitled to mitigation, though he satisfactorily demonstrated that he suffered from an alcoholism-induced impairment at the time of his misconduct, since he failed to provide clear and convincing evidence that his impairment substantially caused his misconduct and that he has been rehabilitated. In re Ayeni, 2003, 822 A.2d 420. Attorney And Client ⇨ 59.14(1); Attorney And Client ⇨ 59.14(2)

Disbarment is the appropriate sanction in nearly all cases of intentional or reckless misappropriation. In re Ayeni, 2003, 822 A.2d 420. Attorney And Client ⇨ 59.14(2)

Misappropriation of commingled funds includes any instance—however minor—when a commingled account falls below the amount due the client, an event that ordinarily signals unauthorized temporary use of client funds, which violates the Rules of Professional Conduct whether the lawyer benefited personally or not. In re Smith, 2003, 817 A.2d 196. Attorney And Client ⇨ 44(2)

In virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence. In re Koven, 2003, 815 A.2d 770. Attorney And Client ⇨ 59.14(2)

Attorney engaged in misappropriation with regard to client's funds when she deposited in her operating account the check that client gave her for settlement of judgment, and attorney then allowed balance in her operating account to fall below the amount given to her by client to satisfy his debt. In re Edwards, 2002, 808 A.2d 476. Attorney And Client ⇨ 44(2)

Evidence did not support finding that attorney engaged in misappropriation of client funds when she received two checks from client in amount of \$375 and \$500, both of which indicated that they were for "fees," and she deposited checks in her escrow account and then withdrew \$700 from the escrow account; record did not indicate what portion of the two checks, if any, was for settlement of bank's claim against client and what portion was for attorney's fees, thereby making it possible that attorney was entitled to the money she withdrew. In re Edwards, 2002, 808 A.2d 476. Attorney And Client ⇨ 53(2)

Attorney did not engage in misappropriation of client funds when she received \$5,500 settlement check from insurance company on behalf of client, deposited it in her operating account, transferred \$4,000 of that money to her escrow account, disbursed sums from escrow account in accordance with settlement sheet, leaving a balance of \$333, and then made an apparently unauthorized payment of \$766.55 to another attorney for work

performed in client's case, where there was no evidence that any client had any interest in the money remaining in escrow account at time that attorney drew the \$766.55 check. In re Edwards, 2002, 808 A.2d 476. Attorney And Client ⇨ 44(2)

Attorney's deposit of \$5,500 settlement check in her operating account when the account carried a negative balance of \$103.60, which effectively reduced amount of deposit to \$5,396.40, did not constitute misappropriation of client's funds, where balance in operating account after the deposit was sufficient to cover amount still due to client pursuant to settlement sheet. In re Edwards, 2002, 808 A.2d 476. Attorney And Client ⇨ 44(2)

Evidence that attorney, after disbursing settlement funds from escrow account in accordance with settlement agreement executed by client, wrote an additional check for \$650 against the escrow account, payable to "Cash," with a notation that said "Attorney's fees," was not sufficient to support finding that attorney engaged in misappropriation of client funds, although check might have been intended as payment of fees in client's case greater than amount to which attorney was entitled; attorney could not recall what the \$650 was for, and there was no evidence connecting \$650 check with client's case, aside from coincidence that check was written just a few days after execution of client's settlement sheet. In re Edwards, 2002, 808 A.2d 476. Attorney And Client ⇨ 53(2)

Attorney's conduct in allowing balance in her escrow account to drop below \$430.86, after client had brought \$430.86 in cash to attorney's office in order to pay off outstanding debt owed to third party, did not constitute misappropriation of client's funds, where the cash was never deposited in either attorney's escrow account or her operating account. In re Edwards, 2002, 808 A.2d 476. Attorney And Client ⇨ 44(2)

To establish that attorney engaged in reckless misappropriation of client funds, Bar Counsel had to prove by clear and convincing evidence that attorney engaged in a pattern or course of conduct demonstrating an unacceptable disregard for the welfare of entrusted funds. In re Edwards, 2002, 808 A.2d 476. Attorney And Client ⇨ 53(2)

Disbarment is the appropriate sanction in nearly all cases of intentional misappropriation of client funds for personal use. In re Lippman, 2002, 806 A.2d 1224. Attorney And Client ⇨ 59.14(2)

Definition of "misappropriation" in attorney disciplinary proceeding as any unauthorized use of client's funds entrusted to the lawyer, including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not she derives any personal gain or benefit therefrom, does not require scienter; rather, it is essentially a per se offense. In re Carlson, 2002, 802 A.2d 341. Attorney And Client ⇨ 44(2)

Evidence was sufficient to support finding that attorney engaged in a pattern or course of conduct demonstrating an unacceptable disregard for the welfare of entrusted funds for firm's condominium

clients, and thus, attorney's conduct was not inadvertent or negligent, but constituted reckless misappropriation of client trust funds, warranting disbarment; although attorney contended that any actions she took that related to the account was only at express direction of her partner, attorney admitted knowing that use of the clients' escrow account was wrong, that she had personally deposited some of client's money into the escrow account and paid herself compensation out of that account, and attorney personally wrote numerous checks on the escrow account made out to cash when she knew about requests from the clients for accountings. In re Carlson, 2002, 802 A.2d 341. Attorney And Client ⇨ 53(2)

Attorney who previously had been disbarred for intentionally misappropriating client funds would be required to make restitution to the client of the illegal \$500 fee that attorney received, with interest at the legal rate of six percent per annum, as a condition of reinstatement; the obligation to pay interest was intertwined with the obligation to make restitution. In re Jackson, 2002, 801 A.2d 38. Attorney And Client ⇨ 61

In virtually all attorney discipline cases involving intentional or reckless misappropriation, disbarment is the appropriate sanction. In re Ladas, 2002, 798 A.2d 1067. Attorney And Client ⇨ 59.14(2)

For purposes of attorney disciplinary proceedings, "misappropriation" is any unauthorized use of a client's funds entrusted to the attorney, including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom. In re Sheridan, 2002, 798 A.2d 516. Attorney And Client ⇨ 44(2)

Although not a per se rule, in virtually all attorney disciplinary cases involving misappropriation, disbarment will be the only appropriate action unless it appears that the misconduct resulted from nothing more than simple negligence, and a lesser sanction is regarded as appropriate only in extraordinary circumstances. In re Sheridan, 2002, 798 A.2d 516. Attorney And Client ⇨ 59.14(2)

Misappropriation by an attorney is defined as any unauthorized use by an attorney of a client's funds entrusted to him or her, whether or not temporary or for personal gain or benefit. In re Davenport, 2002, 794 A.2d 602. Attorney And Client ⇨ 44(2)

Disbarment was appropriate sanction for attorney who failed to pay medical providers out of settlement proceeds, and failed to notify providers of his receipt of funds. In re Gregory, 2002, 790 A.2d 573. Attorney And Client ⇨ 59.14(2)

Attorney's use of Personal Injury Protection (PIP) payments held in trust account to pay personal and business expenses, which allowed his trust account to fall below amounts entrusted to him, did not constitute misappropriation of client funds, where clients consented to use of payments

for litigation costs. In re Arneja, 2002, 790 A.2d 552. Attorney And Client ⇨ 44(2)

To establish misappropriation of client funds, Bar Counsel must prove by clear and convincing evidence that the client did not consent to the attorney's use of the funds. In re Arneja, 2002, 790 A.2d 552. Attorney And Client ⇨ 53(2)

Misappropriation is any unauthorized use of client's funds entrusted to an attorney, including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom. In re Fair, 2001, 780 A.2d 1106. Attorney And Client ⇨ 44(2)

In virtually all cases of misappropriation, disbarment will be the only appropriate action unless it appears that the misconduct resulted from nothing more than simple negligence. In re Fair, 2001, 780 A.2d 1106. Attorney And Client ⇨ 59.14(2)

Intentional or reckless misappropriation of client funds will result in disbarment, unless it appears that the misconduct resulted from nothing more than simple negligence, or save perhaps for extraordinary circumstances. In re Fair, 2001, 780 A.2d 1106. Attorney And Client ⇨ 59.14(2)

Intentional or reckless misappropriation of client funds warranting disbarment means a showing that the attorney handled entrusted funds in a way that reveals either an intent to treat the funds as the attorney's own or a conscious indifference to the consequences of his behavior for the security of the funds. In re Fair, 2001, 780 A.2d 1106. Attorney And Client ⇨ 59.14(2)

Conduct of attorney also acting as personal representative in taking a fee out of estate assets without the then-requisite prior court approval constituted negligent misappropriation, rather than "intentional and/or reckless" misappropriation warranting disbarment, where within a year, same type of conduct was legislatively determined to be utterly licit, attorney acted in context of ambiguous probate culture in which attorneys prepaid themselves from estates and subsequently sought court approval for fees, and attorney took estate funds not for her own use, but as satisfaction for accruing fees on a legitimate but premature claim, against funds which would ultimately be expected to be utilized for that purpose. In re Fair, 2001, 780 A.2d 1106. Attorney And Client ⇨ 44(2)

Attorney's negligent mishandling tends to jeopardize client funds held in trust and undermines public confidence in the bar. In re Fair, 2001, 780 A.2d 1106. Attorney And Client ⇨ 44(2)

Attorney's acts of misappropriation in taking a fee out of estate assets without the then-requisite prior court approval, and subsequently overpaying herself by sum of \$593.45, as well as other misconduct, including her neglect in failing to act with reasonable promptness and diligence, warranted 14-month suspension from practice of law. In re Fair, 2001, 780 A.2d 1106. Attorney And Client ⇨ 59.13(4)

Disbarment is the presumptive remedy for misappropriation by an attorney. In re Bernstein, 2001, 774 A.2d 309. Attorney And Client ⇨ 59.6

Misappropriation is any unauthorized use of client's funds entrusted to a lawyer, including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom; improper intent is not required, as it is essentially a per se offense. In re Asher, 2001, 772 A.2d 1161. Attorney And Client ⇨ 44(2)

Forging clients' names on settlement checks and depositing them into account used for personal and business expenses and entrusted funds constituted misappropriation of those funds. In re Asher, 2001, 772 A.2d 1161. Attorney And Client ⇨ 44(2)

Attorney who accepted attorney fees from an estate, without filing with the probate court a petition for such fees, as was then required by statute, violated the disciplinary rule prohibiting an attorney from collecting an illegal fee. In re Travers, 2000, 764 A.2d 242. Attorney And Client ⇨ 44(1)

Attorney who accepted attorney fees from an estate, without filing with the probate court a petition for such fees, as was then required by statute, did not violate professional responsibility rule requiring an attorney, when terminating representation, to timely refund any advance payment of attorney fees that had not been earned; there was no evidence that the attorney did not earn his fee or that it was unreasonable. In re Travers, 2000, 764 A.2d 242. Attorney And Client ⇨ 44(1)

Assuming, without deciding, that attorney who was joint signatory on estate account was "entrusted" with the funds in that account, any misappropriation by attorney, who had accepted attorney fees from the estate without filing with the probate court a petition for such fees, as was then required by statute, was negligent rather than intentional or reckless; attorney had "sincerely believed" that the statute had not applied to him, and he had obtained consents of heirs and had filed those consents with the court. In re Travers, 2000, 764 A.2d 242. Attorney And Client ⇨ 44(2)

Improper intent need not be shown, to establish unauthorized use of client's funds entrusted to an attorney. In re Travers, 2000, 764 A.2d 242. Attorney And Client ⇨ 44(2)

There are three elements of misappropriation of client funds by an attorney: (1) client funds were entrusted to the attorney; (2) the attorney used those funds for the attorney's own purposes; and (3) such use was unauthorized. In re Travers, 2000, 764 A.2d 242. Attorney And Client ⇨ 44(2)

To establish misappropriation of client funds, it is not enough for an attorney simply to violate a fiduciary duty; the attorney must have been "entrusted" with client funds and must have used those funds without permission. In re Travers, 2000, 764 A.2d 242. Attorney And Client ⇨ 44(2)

Attorney committed intentional misappropriation of client funds, as would warrant disbarment,

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Note 9

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where attorney used client's funds without her knowledge or permission, attorney lied to client and bar counsel about it, and attorney tried to cover it up with fraud, including fraudulently fabricated documents. Rules of Prof. Conduct, Rule 1.15(b). In re Thomas, 1999, 740 A.2d 538, certiorari denied 120 S.Ct. 1425, 529 U.S. 1021, 146 L.Ed.2d 316. Attorney And Client ⇨ 44(2)

10. — Neglect, grounds for discipline

Client established that he could have succeeded on his age discrimination lawsuit, such that law firm's breach of a duty, in failing to respond to a deadline, was the proximate cause of client's loss of damages, thus supporting jury verdict for client in legal malpractice action against law firm; client established prima facie case of employment discrimination by testifying that his boss told him that he was too old for his job shortly before he was fired, and that his replacement was a younger man, and law firm took no steps to rebut client's prima facie case by calling someone from former employer to challenge client's testimony or offer a neutral reason for his termination. Martin v. Ross, 2010, 6 A.3d 860. Attorney And Client ⇨ 112; Civil Rights ⇨ 1204

Attorney's admitted misconduct while representing clients in criminal matters, in each case having failed to adequately communicate with his clients, provide competent representation, respond to court orders, or prosecute his clients' interests, warranted six-month suspension from practice of law with reinstatement conditioned upon showing of fitness to practice. In re Beane, 2010, 6 A.3d 261, reinstatement granted 35 A.3d 1136. Attorney And Client ⇨ 59.13(3)

Attorney's neglect of cases of three clients before United States District Court, his actions in misleading them and lying to them as to status of their cases, and his concealment from them of his suspension from practice amounted to failure to provide competent representation, failure to represent clients with diligence and zeal, failure to seek clients' lawful objectives, failure to communicate with clients, dishonesty, fraud, deceit or misrepresentation, conduct that seriously interfered with administration of justice, and failure to protect clients' interests following termination of relationship, in violation of rules of professional conduct. In re Schoeneman, 2006, 891 A.2d 279. Attorney And Client ⇨ 44(1)

Attorney's misconduct as court-appointed guardian and conservator of client and client's estate warranted disbarment, stayed in favor of three years' monitored and conditional probation, where attorney established that she suffered from disability based on psychiatric disorders, addiction to prescription drugs, and alcoholism, and that her misconduct was substantially affected by her disability. In re Soininen, 2005, 889 A.2d 294. Attorney And Client ⇨ 59.17(1)

Attorney's failure to make reasonable efforts to ensure that conduct of non-attorney employee was compatible with her own professional obligations, facilitating employee's embezzlement of client

funds, warranted 90-day suspension from practice of law, consecutive to 90-day suspension imposed for failure to cooperate in three disciplinary investigations. In re Cater, 2005, 887 A.2d 1. Attorney And Client ⇨ 59.13(4)

Six-month suspension, with restitution to client and requirement of proving fitness to practice as condition of reinstatement, was appropriate disciplinary sanction for attorney's neglect of client's immigration case, in which client sought adjustment of immigration status following his marriage to United States citizen. In re Owusu, 2005, 886 A.2d 536. Attorney And Client ⇨ 59.13(3)

One year suspension, with reinstatement conditioned on a showing of fitness and restitution, was appropriate sanction for attorney who neglected client's matter by failing to file time-sensitive motion to seal client's arrest record after he agreed to do so, settled clients' personal injury claims without their knowledge or consent and otherwise failed to keep clients properly informed or abide by their decisions, failed to keep adequate records of source and disposition of funds in his client trust account, and intentionally harmed client by knowingly delivering an erroneously issued insurance check to the client without warning her against cashing it. In re Wright, 2005, 885 A.2d 315. Attorney And Client ⇨ 59.13(3)

Public censure of attorney, followed by three years probation, was warranted, in attorney disciplinary case, where attorney was retained to probate an estate, he failed to properly complete a petition for probate, he did not complete the probate of estate within a four-year period, and he failed to withdraw from the case after acknowledging his incapacity. In re Bingham, 2005, 881 A.2d 619. Attorney And Client ⇨ 59.17(1)

The imposition of a Board on Professional Responsibility reprimand, rather than an informal admonition, as suggested by attorney, fell within the range of acceptable outcomes, and thus was appropriate sanction for attorney's conduct in failing to file an appeal for an immigration client due to a dispute over attorney's fee. In re Schlemmer, 2005, 870 A.2d 76. Attorney And Client ⇨ 59.8(1)

Attorney's misconduct, which included intentional neglect and dishonesty that caused five clients to lose their respective claims against former employers and two of those clients to suffer large default judgments, as well as proffering a fabricated subpoena to a judicial officer as justification for failing to appear in court, warranted a three-year suspension from the practice of law. In re Steele, 2005, 868 A.2d 146. Attorney And Client ⇨ 59.13(3)

Suspension of eighteen months from practice of law, with reinstatement conditioned upon showing of fitness, rather than six-month suspension, was appropriate sanction for attorney's neglect, failure to keep his clients informed, and failure to protect a client's interest after representation ended, in violation of Rules of Professional Conduct; attorney mishandled client's settlement proceeds and dishonestly responded to disciplinary complaint, but there was lack of history of attorney's encoun-

ters with disciplinary system, he acknowledged his mistakes, and he voluntarily ceased practicing. In re Kitchings, 2004, 857 A.2d 1059. Attorney And Client ⇨ 44(1); Attorney And Client ⇨ 59.13(3)

Attorney's persistent failure to cooperate with Bar Counsel in the investigation of a complaint filed by former client, alleging that he neglected to perform contracted legal services, warranted public censure, rather than 30-day suspension with reinstatement contingent on proof of rehabilitation and fitness to resume the practice of law. In re Mabry, 2004, 851 A.2d 1276. Attorney And Client ⇨ 42; Attorney And Client ⇨ 59.8(1)

Failure of attorney, who was partner in law firm, to exercise proper supervisory responsibility over actions by associate under his supervision violated rule of professional conduct setting forth responsibility of attorney for violation by another; disciplinary proceeding arose after attorney's law firm, which represented two individuals, took action favoring one client without notifying other client or safeguarding his interests, and although attorney did not have actual knowledge of misrepresentation, attorney reasonably should have been aware of associate's acts, and attorney was responsible for behavior under plain language of rule. In re Cohen, 2004, 847 A.2d 1162. Attorney And Client ⇨ 37.1

A 30-day suspension was warranted as reciprocal disciplinary sanction for attorney's misconduct in federal circuit court in failing to respond to a show cause order and explain why he should not have been disciplined on account of dilatory conduct in an appeal before that court while being admitted to appear *pro hac vice*. In re Ellis, 2004, 841 A.2d 1264. Attorney And Client ⇨ 59.18

Suspension for 90 days, with requirement of proof of fitness before reinstatement and with requirement that attorney make restitution to clients for unearned attorney fees, was appropriate disciplinary sanction for attorney's conduct in failing to keep two clients reasonably informed, return their telephone calls, and comply promptly with reasonable requests for information, failing to promptly return unearned fees when her representation of two clients was terminated, and failing to respond to Bar Counsel's and Board on Professional Responsibility's requests for information. In re Hallmark, 2003, 831 A.2d 366. Attorney And Client ⇨ 59.13(3); Attorney And Client ⇨ 61

Sanction recommended by Board of Professional Responsibility against attorney was not inconsistent with discipline imposed in similar cases and was acceptable to Court of Appeals; attorney, among other things, failed to communicate with her client during pendency of his appeal, ignored Court's requests to contact client, did not inform client of, nor accepted, offer by co-defendant's counsel to join in motion for new trial, and failed to forward case file to client for more than two years after he complained, was suspended from practice of law for 30 days with stayed suspension, and was placed on probation for one year subject to supervision. In re Baron, 2002, 808 A.2d 497. Attorney

And Client ⇨ 59.13(3); Attorney And Client ⇨ 59.17(1)

Evidence was sufficient to support finding that attorney failed to render accountings promptly to her condominium clients upon request, thus supporting imposition of disbarment; although attorney attended meetings of the condominium association, and many of the written requests for accountings were addressed to her, she made no effort to see that they were rendered in a timely fashion until two of the condominium clients filed an ethical complaint against attorney and her partner. In re Carlson, 2002, 802 A.2d 341. Attorney And Client ⇨ 53(2)

Attorney's failure to respond to Bar Counsel's inquiries, and to orders of the Board on Professional Responsibility directing a response, in three separate disciplinary investigations, coupled with prior discipline for same misconduct, warranted six-month suspension. In re Mattingly, 2002, 790 A.2d 579.

Attorney's failure to reopen case that client lost because trial court held that she had forged document did not constitute attorney neglect, even though client alleged that she paid attorney substantial retainer to investigate and reopen that case; attorney showed that he consulted with document experts, fingerprint expert, and private officer on client's behalf, but that he could not prove that client did not forge document, and Bar Counsel had previously concluded that attorney's decision not to file motion to reinstate case reflected his professional judgment, and that it would have been ethically improper for him to file such motion if he concluded that he lacked good-faith basis to do so. In re Schoeneman, 2001, 777 A.2d 259. Attorney And Client ⇨ 44(1)

Attorney's failure to return client's telephone calls for three weeks did not constitute failure to keep client reasonably informed; client admitted that she and attorney spoke monthly, that attorney traveled to Baltimore to meet client, that client traveled to Virginia to meet attorney, and that attorney regularly informed her that he was continuing in his efforts to reopen her case and reach settlement with her party opponents, and monthly conversations were not *prima facie* unreasonable, given nature of matter—long-term, complex fraud investigation coupled with extended negotiations. In re Schoeneman, 2001, 777 A.2d 259. Attorney And Client ⇨ 44(1)

An attorney need not communicate with a client as often as the client would like, as long as the attorney's conduct was reasonable under the circumstances. In re Schoeneman, 2001, 777 A.2d 259. Attorney And Client ⇨ 44(1)

11. — Misconduct in other than professional capacity, grounds for discipline

Suspension imposed on attorney for nonpayment of bar dues was administrative and non-disciplinary, and thus bar was not required to proceed pursuant to bar rule applicable to disciplinary proceedings, where bar rule premised discipline on a finding of misconduct; nonpayment of dues did not

constitute misconduct, and suspension for nonpayment of dues did not have consequences comparable to those imposed in disciplinary proceedings. *Sitcov v. District of Columbia Bar*, 2005, 885 A.2d 289. Attorney And Client ⇨ 47.1

Suspension for 90 days, with reinstatement conditioned on attorney proving his fitness to practice law and complying with all outstanding requests for information by Bar Counsel, was warranted as disciplinary sanction for attorney's failure to cooperate with investigations in two original discipline proceedings and one reciprocal discipline proceeding. In *re Follette*, 2004, 862 A.2d 394. Attorney And Client ⇨ 59.13(3)

One year suspension with fitness requirement for reinstatement, rather than three year suspension that Board on Professional Responsibility would normally have recommended, was warranted for attorney who was convicted of third-degree securities fraud in New Jersey that constituted a serious crime and violated professional conduct rule generally defining misconduct, due to length of time that case was pending, through no fault of attorney, and attorney's interim suspension pending final determination. In *re Brown*, 2004, 851 A.2d 1278. Attorney And Client ⇨ 59.13(5)

Sanction of three years' suspension from practice of law, with one year suspended in favor of two years' probation and no fitness requirement for reinstatement, was not inconsistent with prior dispositions of disciplinary matters for comparable conduct or otherwise unwarranted under circumstances, where attorney diverted over \$650,000.00 of his law firm's funds to his personal accounts over four-year period and intended to return to practice of law once his suspension was concluded, in light of mitigating circumstances including his self-report of his thefts, his efforts to enhance security of his law firm's funds in future, and his seeking counseling to address psychological problems. In *re Weiss*, 2003, 839 A.2d 670. Attorney And Client ⇨ 59.18

Kersey mitigation, for professional misconduct substantially affected by the attorney's addiction to lawfully obtained prescription drugs, may be used in appropriate cases where the misconduct has resulted in misdemeanor convictions of crimes not involving moral turpitude. In *re Soininen*, 2001, 783 A.2d 619. Attorney And Client ⇨ 59.5(5)

Suspension of attorney for 30 days, but with *Kersey* mitigation for professional misconduct substantially affected by the attorney's addiction to lawfully obtained prescription drugs, so that the suspension would be stayed during two years of conditional probation, was appropriate for attorney whose misconduct had resulted in misdemeanor convictions for theft and possession of a controlled substance not obtained pursuant to a valid prescription. In *re Soininen*, 2001, 783 A.2d 619. Attorney And Client ⇨ 59.17(1)

11.5. — Contempt of court, grounds for discipline

Attorney's out-of-state disbarment for representing himself in fee award dispute in his divorce

case, in willful and blatant violation of court order barring him from representing clients, did not rise to level of injustice warranting departure from reciprocal discipline imposed in cases in which attorney does not participate in proceedings before Board on Professional Responsibility, where out-of-state disbarment was based on finding that attorney was in contempt for failure to obey court order, and not directly on his self-representation, and violation of court order would violate District of Columbia rules of professional responsibility. In *re Kersey*, 2006, 897 A.2d 198, certiorari denied 127 S.Ct. 1358, 549 U.S. 1217, 167 L.Ed.2d 94. Attorney And Client ⇨ 59.18

12. — Conduct prejudicial to administration of justice, grounds for discipline

Attorney's violation of disciplinary rule requiring lawyer to surrender papers and property to which client was entitled as soon as reasonably practicable warranted 60-day suspension from practice of law, with suspension stayed after the first 30 days in favor of probation for one year provided that, within the first 30 days, attorney filed affidavit with Board and Bar Counsel certifying that he accepted conditions of probation; further, as condition of his probation attorney had to take six hours of continuing legal education courses in (1) legal ethics and (2) law office management as approved by Bar Counsel within first six months of probation, and attorney had to pay restitution to client. In *re Toan Q. Thai*, 2009, 987 A.2d 428. Attorney And Client ⇨ 59.13(3); Attorney And Client ⇨ 59.17(3)

Attorney's acts of misconduct in combination justified a lengthy five-year period of suspension as identical reciprocal discipline, although considered individually, and in isolation they might be deemed less serious; attorney was convicted on separate occasions of public drunkenness and driving under the influence, he had a long history of filing civil actions against numerous and various defendants on grounds that were, at best, of questionable merit, and he was convicted of assaulting an employee of the city attorney's office. In *re Ditton*, 2009, 980 A.2d 1170. Attorney And Client ⇨ 59.18

Attorney's initial failure to respond to request by Bar Counsel for information related to trust account overdrafts, and then refusal to comply with subpoenas to appear before Bar Counsel and to produce documents, violated Bar Rule requiring attorney to comply with court order and Rules of Professional Conduct requiring attorney to respond to lawful request for information and engaging in conduct that seriously interfered with administration of justice. In *re Cooper*, 2007, 936 A.2d 832. Attorney And Client ⇨ 42

Attorney's repeated failures to respond to letters from Bar Counsel and orders of Board on Professional Responsibility, received by her in connection with three separate disciplinary proceedings, violated rules of professional conduct requiring reasonable responses to lawful demands for information from disciplinary authorities and pro-

hibiting conduct seriously interfering with administration of justice, as well as bar rule requiring compliance with orders of court or Board on Professional Responsibility, where attorney's conduct hindered expeditious resolution of allegations against her. In re Cater, 2005, 887 A.2d 1. Attorney And Client ⇨ 42

An attorney's failure to respond to Bar Counsel's inquiries in an investigation of a disciplinary complaint violates professional conduct rule barring attorneys from engaging in conduct that seriously interferes with administration of justice. In re Owusu, 2005, 886 A.2d 536. Attorney And Client ⇨ 42

Attorney's combined failure to respond to Bar Counsel's inquiry into his representation of client and failure to inform the Bar of his current address did not violate professional conduct rule barring attorneys from engaging in conduct that seriously interferes with administration of justice; attorney had not been served personally with complaint and/or orders of Board on Professional Responsibility, and while such lack of actual notice may have been caused by attorney's failure to update his registration statements with Bar for over three years following attorney's neglect of client's immigration case, the reasons for attorney's failure to update his address were unknown, so that attorney's knowledge of Bar Counsel's inquiry could not be imputed and it could not be said that attorney deliberately evaded Bar Counsel's inquiry. In re Owusu, 2005, 886 A.2d 536. Attorney And Client ⇨ 42

Six month suspension from the practice if law was warranted, in attorney disciplinary case, where attorney engaged in the unauthorized practice of law and filed notices of appearance while she was subject to an interim order of suspension from a prior disciplinary case. In re Soininen, 2004, 853 A.2d 712. Attorney And Client ⇨ 59.13(3)

A failure to respond to Bar Counsel's investigation, combined with a failure to comply with a Board on Professional Responsibility order, qualifies as a violation of professional conduct rule prohibiting an attorney from interfering with the administration of justice. In re Spitzer, 2004, 845 A.2d 1137. Attorney And Client ⇨ 42

Attorney's failure to respond to requests for information from bar counsel and board on professional responsibility violated rules of professional conduct prohibiting failure to respond to lawful demand for information from disciplinary authority and serious interference with administration of justice, as well as bar rule requiring compliance with orders of board on professional responsibility. In re Beller, 2004, 841 A.2d 768. Attorney And Client ⇨ 42

Attorney's failure to meet federal appellate court's court-ordered deadlines, disregard of federal rules of appellate procedure, and failure to cooperate with opposing counsel, constituted conduct that seriously interfered with administration

of justice. In re Balsamo, 2001, 780 A.2d 255. Attorney And Client ⇨ 42

Attorney who failed to pay \$3,652.74 judgment rendered against him for accepting attorney fees from an estate, without filing with the probate court a petition for such fees, as was then required by statute, interfered with the administration of justice, in violation of professional responsibility rules; the attorney violated a court order, and the personal representative of the estate had to make repeated demands for payment, had to file a complaint with the Clients' Security Trust Fund, and, most important, had been unable to close the estate and distribute its assets for several years. In re Travers, 2000, 764 A.2d 242. Attorney And Client ⇨ 42

Attorney's failure to pay \$3,652.74 judgment rendered against him for accepting attorney fees from an estate, without filing with the probate court a petition for such fees, as was then required by statute, did not interfere with the administration of justice, in violation of professional responsibility rules, before the estate could have been closed and before the Court of Appeals had affirmed the judgment against attorney. In re Travers, 2000, 764 A.2d 242. Attorney And Client ⇨ 42

12.3. Judgmental immunity

Decision by law firm, retained by client as appellate counsel in underlying patent infringement action against client in federal court, not to raise a claim, in client's initial appeal in underlying action, of constitutional excessiveness of award of punitive damages against client, which was three times the award of compensatory damages, was a reasonable professional judgment, and thus, under judgmental immunity doctrine, law firm was not liable to client for legal malpractice, relating to waiver of client's right to challenge punitive damages award, as being constitutionally excessive, when, on remand after initial appeal, trial court considerably reduced award of compensatory damages, resulting in ratio of 38,000 to 1 between punitive damages and reduced award of compensatory damages; before appellate court's ruling in appeal by client following remand, the law had been unsettled in the federal circuit regarding whether the constitutional challenge would be waived on remand if not raised in initial appeal, and at time of initial appeal, a fair reading of existing Supreme Court precedent would have been that a ratio of ten-to-one between punitive and compensatory damages would not be constitutionally excessive. *Biomet Inc. v. Finnegan Henderson LLP*, 2009, 967 A.2d 662. Attorney And Client ⇨ 112.50

12.5. Law applicable

A failure to respond to Bar Counsel's investigation, combined with a failure to comply with a Board on Professional Responsibility order, qualifies as a violation of professional conduct rule prohibiting an attorney from interfering with the administration of justice. In re Spitzer, 2004, 845 A.2d 1137. Attorney And Client ⇨ 42

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Note 12.5

Any error by Board on Professional Responsibility in applying District of Columbia Rules of Professional Conduct, rather than Virginia rules, during disciplinary proceeding against attorney who was member of District of Columbia bar that arose from his conduct while representing client in Virginia, was harmless, where application of Virginia rules would not have been more favorable to attorney. In *re Bernstein*, 2001, 774 A.2d 309. Attorney And Client ⇌ 57

Virginia's disciplinary rules applied to attorney discipline case in which the charged misconduct of revealing clients' secrets occurred in connection with a proceeding in that state, where attorney was counsel of record in the proceeding and was a member of the Virginia bar. In *re Gonzalez*, 2001, 773 A.2d 1026. Attorney And Client ⇌ 32(2)

13. Reciprocal discipline

Attorney did not have due process right, in Florida attorney disciplinary proceedings, to subpoena judges who presided over his child support contempt proceedings and who sanctioned him for vexatious and meritless litigation, and therefore, suspension from practice of law for three years did not violate due process, as grounds for rebutting presumption in favor of reciprocal discipline in District of Columbia. In *re Sibley*, 2010, 990 A.2d 483, certiorari dismissed 131 S.Ct. 253, 178 L.Ed.2d 7. Attorney And Client ⇌ 59.18; Constitutional Law ⇌ 4273(3)

Attorney did not have Sixth Amendment right of confrontation in attorney disciplinary proceedings in Florida, and therefore, suspension from practice of law in Florida for three years did not violate due process, as grounds for rebutting presumption in favor of reciprocal discipline in District of Columbia. In *re Sibley*, 2010, 990 A.2d 483, certiorari dismissed 131 S.Ct. 253, 178 L.Ed.2d 7. Attorney And Client ⇌ 59.18; Constitutional Law ⇌ 4273(3)

Evidence presented before Florida referee in attorney disciplinary proceedings was sufficient to show that attorney's numerous lawsuits and appeals were frivolous, resulting in imposition of sanctions, and therefore, attorney disciplinary proceedings that resulted in suspension from practice of law for three years did not violate due process, as grounds for rebutting presumption in favor of reciprocal discipline in District of Columbia; district court found that lawsuits and appeals were without merit and abuse of legal process, and entered order barring attorney from further self-representation to prevent filing of frivolous petitions. In *re Sibley*, 2010, 990 A.2d 483, certiorari dismissed 131 S.Ct. 253, 178 L.Ed.2d 7. Attorney And Client ⇌ 59.18; Constitutional Law ⇌ 4273(3)

Attorney did not have due process right, in Florida attorney disciplinary proceedings, to subpoena judges who presided over his child support contempt proceedings and who sanctioned him for vexatious and meritless litigation, and therefore, suspension from practice of law for three years did not violate due process, as grounds for rebutting

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Attorney's indefinite suspension from practice of law in another jurisdiction for professional rule violations involving competence, commingling and misappropriation, disbaring client finds, and interfering with administration of justice warranted indefinite suspension from practice of law in District of Columbia as reciprocal discipline. In *re Maignan*, 2010, 988 A.2d 493. Attorney And Client ⇌ 59.18

When a member of the District of Columbia Bar has been disbarred, suspended, or placed on probation by another disciplining court, the rule governing reciprocal discipline creates a rebuttable presumption that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In *re Gonzalez*, 2009, 967 A.2d 658. Attorney And Client ⇌ 59.18

Ninety-day suspension from practice of law, with reinstatement conditioned on proof of rehabilitation, was warranted for attorney who was suspended for three months in New Jersey and required to apply for reinstatement in New Jersey by filing petition establishing fitness to resume practice, even though attorney was summarily reinstated in New Jersey, where attorney failed to show that any of the exceptions to rule requiring identical reciprocal discipline applied. In *re Gonzalez*, 2009, 967 A.2d 658. Attorney And Client ⇌ 59.18

Imposition of identical reciprocal discipline, a six-month suspension followed by a three-year period of unsupervised probation, subject to conditions imposed by Virginia court, was warranted for attorney who was subject to discipline in Virginia stemming from representing a client in an employment discrimination matter; Board on Professional Responsibility recommended reciprocal discipline, attorney consented to the discipline, case did not present any basis to reduce the recommended sanction, and Board's recommendation was to be given heightened deference since no exceptions were filed. In *re Beattie*, 2008, 956 A.2d 84. Attorney And Client ⇌ 57; Attorney And Client ⇌ 59.18

Attorney's three-year suspension in Delaware for concealment of failure to pay taxes and failure to provide competent client representation warranted imposition of reciprocal discipline in District of Columbia of three years' suspension with requirement of demonstration of fitness prior to

reinstatement, where no enumerated exception to reciprocal discipline applied. In *re Ayres-Fountain*, 2008, 955 A.2d 157. Attorney And Client ⇨ 59.18

Attorney's misconduct in Maryland, including calling a member of his staff to testify under oath in collection action under name of client's corporate representative, warranted imposition of identical reciprocal discipline of disbarment, where attorney failed to rebut presumption favoring identical reciprocal discipline or to file exceptions to recommendation of Board on Professional Responsibility, and sanction of disbarment was not inconsistent with discipline imposed for similar misconduct in the District of Columbia. In *re Kline*, 2008, 955 A.2d 155. Attorney And Client ⇨ 59.18

Six-month suspension from practice of law in District of Columbia, with reinstatement requirement, was appropriate reciprocal sanction for attorney's misconduct in New Jersey in violation of New Jersey Rules of Professional Conduct that resulted in six-month suspension there. In *re Landfield*, 2008, 955 A.2d 150. Attorney And Client ⇨ 59.18

Proceedings in Montana in which attorney was denied admission to bar of that state did not provide a basis for imposing either reciprocal or original discipline; even though the opinion of Supreme Court of Montana raised questions about attorney's fitness for the practice of law, consideration of such proceedings would give preclusive effect to factual findings made in a non-disciplinary proceeding, and neither Board on Professional Responsibility nor a hearing committee made independent findings by clear and convincing evidence related to attorney's mental and emotional fitness. In *re Ditton*, 2008, 954 A.2d 986, opinion after remand 980 A.2d 1170. Attorney And Client ⇨ 53(2); Attorney And Client ⇨ 59.18

Where the Board on Professional Responsibility recommends reciprocal attorney discipline, identical discipline should be imposed unless the attorney demonstrates, or the court finds on the face of the record, by clear and convincing evidence, one of the five exceptions. In *re Ditton*, 2008, 954 A.2d 986, opinion after remand 980 A.2d 1170. Attorney And Client ⇨ 59.18

Disbarment was warranted as reciprocal discipline in District of Columbia, after attorney was disbarred in Delaware for either admitting or having been found to have repeatedly failed his fiduciary and financial obligations, repeatedly misappropriating client funds, falsifying records, and failing to file tax returns for several years. In *re Fountain*, 2008, 954 A.2d 413. Attorney And Client ⇨ 59.18

Disbarment was warranted as reciprocal discipline in District of Columbia, after attorney was disbarred in Maryland for commingling funds and misusing trust account funds. In *re Turnbo*, 2008, 953 A.2d 1026. Attorney And Client ⇨ 59.18

Where no exceptions to the Board on Professional Responsibility's recommendation for reciprocal

discipline have been noted, the Court of Appeals reviews a foreign disciplinary proceeding to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline. In *re Sawyer*, 2008, 953 A.2d 1019. Attorney And Client ⇨ 59.18

Disbarment was warranted as reciprocal discipline in District of Columbia, after attorney was disbarred in Maryland for serious and protracted acts of neglect and was dishonest with clients, opposing counsel, and tribunals during his representation of two clients in separate probate and bankruptcy matters. In *re Steinberg*, 2008, 953 A.2d 306. Attorney And Client ⇨ 59.18

In an attorney disciplinary proceeding, where no exception has been taken to the report and recommendation of the Board on Professional Responsibility, the Court of Appeals gives heightened deference to its recommendation. In *re Feigenbaum*, 2008, 951 A.2d 754. Attorney And Client ⇨ 57

Where neither Bar Counsel nor the attorney opposes identical discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline, a situation that the Court anticipates would rarely, if ever, present itself. In *re Feigenbaum*, 2008, 951 A.2d 754. Attorney And Client ⇨ 59.18

No obvious miscarriage of justice resulted from imposition on attorney of reciprocal discipline of five-year suspension from practice of law with a fitness condition for reinstatement, after attorney resigned from bar of another state, as record supported conclusion that attorney had actual knowledge of other state's proceedings against him, in that the notice of disciplinary charges and motion for default were mailed to address that attorney provided and those mailings were not returned, attorney received sufficient notice of reciprocal disciplinary proceeding, in that notice was mailed to his preferred address of record, and five-year suspension with fitness condition was identical to a resignation from other state's bar. In *re Feigenbaum*, 2008, 951 A.2d 754. Attorney And Client ⇨ 59.18

In a reciprocal attorney discipline case, unless the exceptions in Bar Rule apply regarding lack of due process, infirmity of proof establishing misconduct, or that the misconduct elsewhere did not constitute misconduct in the District of Columbia, reciprocal discipline is not to be based upon an independent evaluation of the evidence to find violations that the disciplining court did not find. In *re Reed*, 2008, 950 A.2d 35. Attorney And Client ⇨ 59.18

Disbarment from practice of law was appropriate reciprocal discipline after attorney was disbarred from practice of law in Pennsylvania following convictions for felony sexual abuse of children, dissemination of obscenity to minors, criminal use of communication facility, and possessing instru-

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ments of crime. In re Wright, 2008, 949 A.2d 583. Attorney And Client ⇨ 59.18

Disbarment was appropriate reciprocal discipline for attorney's misconduct of misrepresenting to clients the status of their personal injury matters, improperly placing a \$10,000 attorney's lien on the case of another client after he was terminated one day after being retained to represent the client in a personal injury matter and after doing no work on behalf of the client, and being convicted of second-degree assault, which resulted in disbarment from practice of law in Maryland. In re Long, 2008, 948 A.2d 516. Attorney And Client ⇨ 59.18

Suspension from practice of law for two years, stayed in favor of probation for three years, with a nine-month actual suspension was appropriate reciprocal discipline for attorney's failure to file affidavit showing his compliance with court order requiring him pay restitution to former client, which resulted in suspension from practice of law in California for two years, stayed in favor of probation for three years, with a nine-month actual suspension. In re Coopet, 2008, 947 A.2d 1125. Attorney And Client ⇨ 59.18

Attorney's failure to cooperate with disciplinary authorities in another jurisdiction warranted imposition of reciprocal 30-day suspension from practice of law, followed by 90 days of probation, where such sanction was within range of appropriate sanctions for such misconduct. In re Griffin, 2008, 945 A.2d 606. Attorney And Client ⇨ 59.18

Disbarment from practice of law in District of Columbia was appropriate reciprocal sanction for attorney's misappropriation of client funds and serious misrepresentations, which led to voluntary surrender of license to practice law in Georgia, which was tantamount to disbarment there. In re Quint, 2008, 945 A.2d 605. Attorney And Client ⇨ 59.18

Disbarment was appropriate reciprocal discipline for attorney's massive misappropriation of client funds, commingling of client funds with personal funds, and abandonment of clients, which resulted in disbarment from practice of law in Florida. In re Drake, 2008, 944 A.2d 1035. Attorney And Client ⇨ 59.18

Five-year suspension was warranted in reciprocal discipline proceeding against attorney who resigned from California Bar while charges were pending for his unauthorized practice of law in Florida, even though the misconduct that led to the disciplinary proceeding against attorney occurred before his admission to the District of Columbia Bar. In re Lebowitz, 2008, 944 A.2d 444. Attorney And Client ⇨ 59.18

Suspended attorney would be required to show proof of fitness to practice law in District of Columbia, upon conclusion of his period of suspension in reciprocal attorney disciplinary action, where attorney's prior disciplinary record gave rise to serious doubt concerning his fitness to meet his responsibilities to court and to defendants in his practice as prosecutor, New York disciplinary au-

thorities imposed such requirement, and attorney was required to make same showing in New York as in District of Columbia to demonstrate fitness. In re Stuart, 2008, 942 A.2d 1118. Attorney And Client ⇨ 59.18

Two-step analysis applies to imposition of substantially different discipline in reciprocal attorney-discipline proceeding in District of Columbia: first, it is necessary to determine if misconduct in question would not have resulted in same punishment in District it did in disciplining jurisdiction, and second, if discipline imposed in District would be different from that of disciplining court, it must be determined whether the difference is substantial. In re Maignan, 2007, 942 A.2d 1115. Attorney And Client ⇨ 59.18

To obtain nunc pro tunc treatment in reciprocal discipline proceeding in District of Columbia, lawyer facing reciprocal suspension should: (1) promptly notify Bar Counsel, with respect to foreign discipline; (2) cease practicing law in District of Columbia; (3) file a *Goldberg* affidavit with Board on Professional Responsibility attesting to having completed the preceding two requirements; and (4) file affidavit of compliance with interim suspension order, with the Board and the Court of Appeals, with service on Bar Counsel. In re Maignan, 2007, 942 A.2d 1115. Attorney And Client ⇨ 59.18

Six-month suspension in District of Columbia, with requirement to prove fitness as condition of reinstatement, but with attorney permitted to petition to vacate the fitness requirement if he was summarily reinstated in Maryland, was appropriate reciprocal discipline for attorney who had received indefinite suspension in Maryland for lack of competence, commingling and misappropriation, disbursing client funds, and interfering with administration of justice. In re Maignan, 2007, 942 A.2d 1115. Attorney And Client ⇨ 59.18

Attorney's disbarment from practice of law in Tennessee for engaging in misrepresentation and deceit both to court and clients, failing to preserve client property, charging excessive fees, violating court orders, and other violations of court rules, warranted reciprocal sanction of disbarment in District of Columbia. In re Slavin, 2007, 940 A.2d 112. Attorney And Client ⇨ 59.18

Reciprocal discipline of five years' suspension from practice of law, coupled with proof of compliance with Virginia Supreme Court's conditions for reinstatement, was appropriate sanction for violations of Virginia ethics rules by attorney also licensed in District of Columbia, since recommendation of reciprocal discipline was unopposed and no evidence was presented to rebut presumption in favor of reciprocal discipline. In re Weiss, 2007, 940 A.2d 104. Attorney And Client ⇨ 59.18

Indefinite suspension from the practice of law, with right to apply for reinstatement after attorney was reinstated in Maryland or after five years, was appropriate reciprocal sanction for attorney's misconduct in committing a criminal act that reflected adversely on his honesty, trustworthiness

or fitness as a lawyer, although such sanction is not specifically identified in the District of Columbia Bar Rules, where neither the attorney nor Bar Counsel opposed the imposition of discipline identical to that imposed by the State of Maryland. In *re Rosenberg*, 2008, 938 A.2d 783. Attorney And Client ⇨ 59.18

Six-month suspension, with requirement to prove fitness as condition of reinstatement, was warranted as reciprocal discipline in District of Columbia, after attorney received discipline in New Jersey, i.e., suspension for six months and "until further order" of New Jersey Supreme Court, for misconduct that included failure to safeguard and promptly deliver funds, record-keeping violations, failure to expedite litigation, lack of fairness to opposing party, lack of truthfulness, criminal conduct reflecting adversely on attorney's honesty, lack of trustworthiness or fitness as lawyer, conduct involving dishonesty, fraud, deceit, or representation, and conduct prejudicial to administration of justice. In *re Richardson*, 2007, 935 A.2d 1076. Attorney And Client ⇨ 59.18; Attorney And Client ⇨ 61

Imposition of identical discipline in District of Columbia, in reciprocal discipline proceeding after attorney received discipline in New Jersey, i.e., suspension for six months and "until further order" of New Jersey Supreme Court, would not result in miscarriage of justice; attorney participated in New Jersey disciplinary proceeding, entered stipulations, and submitted testimony. In *re Richardson*, 2007, 935 A.2d 1076. Attorney And Client ⇨ 59.18

In determining whether an attorney's misconduct warrants substantially different discipline as that imposed by the original disciplining jurisdiction, the Court of Appeals, in a reciprocal disciplinary proceeding, must consider: (1) whether the misconduct would have resulted in the same punishment in the District of Columbia, and (2) if the sanction would have been different, whether it is substantially so. In *re Zakroff*, 2007, 934 A.2d 409, opinion after remand 956 A.2d 86. Attorney And Client ⇨ 59.18

Sixty-day suspension from the practice of law, with a stay of the suspension in favor of a 60-day period of unsupervised probation, was warranted, in reciprocal attorney disciplinary proceeding; attorney was suspended from the practice of law in Virginia for 60 days, attorney promptly notified state bar counsel of the suspension, attorney did not practice law in state during his 60-day suspension in Virginia, after attorney resumed the practice of law in state bar counsel entered an interim suspension of attorney, and that suspension was lifted 60 days later, such that attorney had already served two separate 60-day suspensions from the practice of law in state. In *re Beattie*, 2007, 930 A.2d 972. Attorney And Client ⇨ 59.18

Imposition of reciprocal discipline was warranted, in attorney disciplinary case involving attorney who was suspended for 60 days by the Virginia State Bar Disciplinary Board, where attorney failed to establish that any of the exceptions to the

imposition of reciprocal discipline applied. In *re Beattie*, 2007, 930 A.2d 972. Attorney And Client ⇨ 59.18

Six-month suspension from practice of law, rather than 60-day suspension, which was discipline attorney had received in foreign jurisdiction, was appropriate reciprocal discipline to impose upon attorney for negligent misappropriation of funds, as usual sanction for negligent misappropriation was a six-month suspension and difference between 60-day suspension and a six-month suspension was substantial. In *re Greenwald*, 2007, 926 A.2d 169. Attorney And Client ⇨ 59.18

Attorney's affidavit stating that since time of suspension from practice of law in foreign state he had not had any clients in the District of Columbia was insufficient to satisfy bar rules requirement of an affidavit demonstrating that attorney had advised clients and attorneys for adverse parties of the suspension, and thus reciprocal 10-day suspension in the District of Columbia would be deemed to commence, for purpose of reinstatement, when attorney demonstrated either that there were no qualifying clients or adverse parties at the time of the foreign discipline, or that he had informed any such clients and adverse parties. In *re Granoski*, 2006, 911 A.2d 1225. Attorney And Client ⇨ 59.18

Appropriate discipline for attorney's misconduct, as found by the Supreme Court of Tennessee, including failure to follow court orders, conduct involving dishonesty, fraud, deceit, or misrepresentation, and intentionally prejudicing or damaging the client during the course of the professional relationship, was two-year suspension of attorney's license to practice law, with a fitness condition for reinstatement, where two-year suspension was ordered in Tennessee, attorney's misconduct in Tennessee also violated District of Columbia Rules of Professional Conduct, and identical discipline was within range of sanctions imposed for similar misconduct. In *re Slavin*, 2006, 911 A.2d 822. Attorney And Client ⇨ 59.13(3); Attorney And Client ⇨ 59.17(3)

Disbarment was warranted in reciprocal disciplinary proceeding brought against attorney who was previously disbarred in Maryland for violations of Maryland's Rules of Professional Conduct, including intentional misappropriation; although attorney filed exceptions to the board on professional responsibility's report, he failed to file a brief, as required by several court orders, and thus, the recommendation for reciprocal discipline was effectively unopposed. In *re James*, 2006, 911 A.2d 409. Attorney And Client ⇨ 57; Attorney And Client ⇨ 59.18

Massachusetts Board of Bar Overseers and Attorney Grievance Commission of Maryland were not the highest courts in their respective states, for purposes of determining whether reciprocal discipline could be imposed, under District of Columbia's reciprocal discipline rule, on attorneys disciplined in Massachusetts and Maryland; though the Board of Bar Overseers and the Attorney Grievance Commission had been delegated authori-

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ty by their respective jurisdictions to recommend suspension or disbarment, "highest court" did not mean a lower level entity to which authority had been delegated by the highest court. In re Green-span, 2006, 910 A.2d 324. Attorney And Client ⇨ 59.18

In reciprocal disciplinary action, five-year suspension, with reinstatement conditioned upon proof of fitness to practice, was appropriate sanction for attorney who had resigned from the New York Bar because he had withdrawn client funds without the knowledge and consent of his clients and had failed to retain records for his attorney trust accounts; suspension for five years, with reinstatement conditioned on proof of fitness, was functionally identical to sanction imposed in New York, in that attorney was ineligible to seek reinstatement in New York until seven years after effective date of his resignation. In re Goldman, 2006, 910 A.2d 291. Attorney And Client ⇨ 59.18

In reciprocal attorney disciplinary action, six-month suspension was appropriate sanction for attorney who was publicly censured in Arizona for neglect, negligent misappropriation, commingling, and trust account violations; the difference between a public censure and a six-month suspension was substantial, Board on Professional Responsibility found that an exception to the imposition of identical reciprocal discipline existed and that substantially different discipline of a six-month suspension was instead warranted, and six-month suspension was within the range of sanctions imposed for similar misconduct. In re Vejar, 2006, 908 A.2d 1171. Attorney And Client ⇨ 59.18

Delay in Maryland attorney disciplinary proceedings did not prejudice attorney or constitute a denial of due process, for the purpose of reciprocal disciplinary proceeding; attorney had notice of the Maryland proceedings, he participated in the proceedings and was represented by counsel, the Maryland court considered the delay in resolving the disciplinary complaint, and the reciprocal disciplinary proceedings did not provide attorney with an opportunity to collaterally attack the Maryland judgment. In re Hermina, 2006, 907 A.2d 790. Attorney And Client ⇨ 59.18; Constitutional Law ⇨ 4273(3)

Attorney failed to establish that exception to presumptive imposition of reciprocal discipline, based on finding that imposition of same discipline by Court of Appeals would result in grave injustice, applied to prevent imposition of reciprocal discipline of one-year suspension, stayed for two years of unsupervised probation; attorney stipulated that he has never practiced law in the District of Columbia, and that he has no relationships with counsel, no clients or office, and no plans to practice law in District of Columbia. In re Fuchs, 2006, 905 A.2d 160. Attorney And Client ⇨ 59.18

In reciprocal discipline case, one year suspension, stayed in favor of probation for two years and an actual suspension of sixty days, was appropriate sanction for attorney who was suspended in California for one-year, with the suspension stayed in favor of probation for two years subject to certain

conditions, for ethical violations with respect to his representation of a client. In re Coopet, 2006, 904 A.2d 359. Attorney And Client ⇨ 59.18

Three-year suspension from the practice of law, with a fitness requirement for reinstatement, was warranted, in reciprocal attorney disciplinary case in which attorney was found to have violated the New Jersey rules of professional conduct by committing a criminal act that reflected adversely on attorney's honesty, trustworthiness, or fitness as a lawyer and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; the sanction imposed by the New Jersey courts was within the range of sanctions that would be imposed for similar misconduct in the District of Columbia. In re Meaden, 2006, 902 A.2d 802. Attorney And Client ⇨ 59.18

The New Jersey court's application of its standard for determining whether attorney's mental condition warranted mitigation of disciplinary sanctions, which differed from the standard applied in the District of Columbia, did not warrant rejection of the discipline imposed during disciplinary proceedings in New Jersey, in reciprocal disciplinary case, even though attorney argued that he was entitled to mitigation of sanction under the District of Columbia standard; the principles of collateral estoppel applied in reciprocal disciplinary cases. In re Meaden, 2006, 902 A.2d 802. Attorney And Client ⇨ 59.18; Attorney And Client ⇨ 60

When attorney fails to participate in the disciplinary proceedings, the imposition of identical reciprocal discipline should be close to automatic, with minimum review by both the Board of Professional Responsibility and Court of Appeals. In re Willingham, 2006, 900 A.2d 165. Attorney And Client ⇨ 57; Attorney And Client ⇨ 59.18

In reciprocal disciplinary action, five-year suspension, with attorney's reinstatement conditioned on fitness and compliance with the Bankruptcy Court's order of disgorgement, was appropriate sanction for attorney who was suspended from practicing before Bankruptcy Court for five years and whose reinstatement was conditioned on his disgorgement of \$39,297.06 in legal fees he made when representing debtors in bankruptcy proceeding; attorney failed to disclose his representation of entities that were associated with debtors, recorded post-petition liens on debtors' residence without proper disclosure to Bankruptcy Court or debtors, and violated Bankruptcy Court orders. In re Lickstein, 2006, 898 A.2d 897. Attorney And Client ⇨ 59.18

Attorney's disbarment in another jurisdiction warranted his reciprocal disbarment in the District of Columbia, where attorney failed to rebut presumption favoring identical reciprocal discipline, no evidence in record indicated that reciprocal discipline was inappropriate, and unopposed recommendation of disbarment by Board on Professional Responsibility was entitled to heightened deference on judicial review. In re Cervizzi, 2006, 898 A.2d 896. Attorney And Client ⇨ 57; Attorney And Client ⇨ 59.18

Attorney's violations of provisions of Virginia Code of Professional Responsibility prohibiting deliberately wrongful acts reflecting adversely on fitness, dishonesty, intentional failure to seek client's lawful objectives, intentional failure to carry out employment contract, intentional prejudice or damage to client, and unauthorized practice of law, and requiring reasonable fees, explanations of contingent fees, competence, promptness, and advising clients of communications from another party, and resulting in imposition of three-year suspension, warranted imposition of identical reciprocal sanction in the District of Columbia, where sufficient evidence supported findings of charged misconduct and recommended sanction did not constitute inconsistent disposition. In re Foshee, 2006, 897 A.2d 203. Attorney And Client ⇨ 59.18

Six-month suspension as reciprocal discipline running nunc pro tunc from date of affidavit by attorney was warranted for dishonesty, false claim of being an expert or specialist in immigration matters, failure to attend promptly to matters undertaken for a client, and lack of competence. In re Park, 2006, 894 A.2d 411. Attorney And Client ⇨ 59.18

District of Columbia handled disciplinary actions arising from an attorney's personal attacks on a judge or court officer differently from Maryland, as element for determining whether it was appropriate for District of Columbia Court of Appeals to apply the "substantially different discipline" exception to the presumption in favor of identical reciprocal discipline of an attorney. In re De Maio, 2006, 893 A.2d 583. Attorney And Client ⇨ 59.18

Suspension for 18 months, rather than disbarment, was appropriate reciprocal discipline in District of Columbia, after attorney had been disbarred in Maryland for making false and inflammatory allegations against a judge and a court clerk. In re De Maio, 2006, 893 A.2d 583. Attorney And Client ⇨ 59.18

Attorney's bizarre and erratic behavior before Maryland courts, relating to his false and inflammatory allegations against judge and court clerk in Maryland, and the content of his filings in reciprocal discipline proceeding in District of Columbia, cast serious doubt upon attorney's continuing fitness to practice law, and thus, it was appropriate to condition attorney's reinstatement, following 18-month suspension in District of Columbia, upon attorney's demonstration of his fitness to practice law. In re De Maio, 2006, 893 A.2d 583. Attorney And Client ⇨ 59.13(3)

To decide whether it is appropriate to apply the "substantially different discipline" exception to the presumption in favor of identical reciprocal discipline of an attorney, the Court of Appeals undertakes a two-step inquiry: (1) whether the misconduct in question would not have resulted in the same punishment in the District of Columbia as it did in the disciplining jurisdiction, and (2) if the discipline imposed in the District of Columbia would be different from that of the disciplining court, whether the difference is substantial. In re

De Maio, 2006, 893 A.2d 583. Attorney And Client ⇨ 59.18

Court of Appeals, in imposing reciprocal discipline on attorney, would adhere to principles of collateral estoppel and accept ruling of New York court that disbarred attorney, rather than entertain attorney's allegations that there was an "infirmity of proof" with respect to New York ethics panel's conclusion that attorney's conduct had been prejudicial to administration of justice, particularly where several courts had examined report of ethics panel and had rejected attorney's allegations of "infirmity of proof." In re Edelstein, 2006, 892 A.2d 1153. Attorney And Client ⇨ 60

In cases where neither Bar Counsel nor the attorney opposes reciprocal discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline, a situation that would rarely, if ever, present itself. In re Zentz, 2006, 891 A.2d 277. Attorney And Client ⇨ 59.18

In reciprocal disciplinary action, public censure was appropriate sanction for attorney who was reprimanded in Maryland for assisting a disbarred attorney in filing papers in the United States Bankruptcy Court; there was no miscarriage of justice in the Maryland proceedings as the record revealed that attorney was not denied due process and was represented by counsel when he voluntarily consented to discipline, and censure in the District of Columbia was the functional equivalent of a reprimand by the Maryland Court of Appeals. In re Zentz, 2006, 891 A.2d 277. Attorney And Client ⇨ 59.18

Disbarment in District of Columbia was appropriate reciprocal discipline, after attorney had been disbarred in Maryland for intentional misappropriation of client funds and failure to respond to requests for information made by Maryland Bar Counsel. In re Zdravkovich, 2006, 891 A.2d 258. Attorney And Client ⇨ 59.18

There is a rebuttable presumption that the sanction imposed by the Court of Appeals in a reciprocal attorney discipline case will be identical to that imposed by the original disciplining court; this presumption is rebutted only if the attorney demonstrates, or the face of the record reveals, by clear and convincing evidence the existence of one of the conditions enumerated in the applicable bar rule. In re Angel, 2005, 889 A.2d 993. Attorney And Client ⇨ 59.18

Identical and reciprocal sanction of disbarment, in attorney disciplinary proceedings, was not so excessive as to be grossly unjust, where bar counsel recommended disbarment and attorney did not oppose it. In re Gruber, 2005, 889 A.2d 991. Attorney And Client ⇨ 59.18

Attorney did not meet his burden of establishing that his conduct as prosecutor in Maryland, for which he had received public reprimand in that state for violating state's professional conduct rule regarding trial publicity, did not violate District of

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Columbia's professional conduct rule regarding special responsibilities of a prosecutor, as exception to rebuttable presumption, created by District Bar Rule regarding reciprocal discipline, that attorney discipline will be the same in District as it was in original disciplining jurisdiction; attorney merely made a conclusory assertion, without attempting to show clearly and convincingly that differences in language in professional conduct rules permitted any more liberal resort to out-of-court statements by prosecutors in District than in Maryland. In *re Gansler*, 2005, 889 A.2d 285. Attorney And Client ⇨ 59.18

Attorney's contention that he could not have foreseen that his extrajudicial comments as prosecutor would violate Maryland professional conduct rule's safe harbor regarding trial publicity did not establish that Maryland attorney disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute deprivation of due process, as exception to rebuttable presumption, created by District of Columbia Bar Rule regarding reciprocal discipline, that attorney discipline will be the same in District as it was in original disciplining jurisdiction. In *re Gansler*, 2005, 889 A.2d 285. Attorney And Client ⇨ 59.18; Constitutional Law ⇨ 4273(3)

"Infirmity of proof" exception to rebuttable presumption, created by District of Columbia Bar Rule regarding reciprocal discipline, that attorney discipline will be the same in District as it was in original disciplining jurisdiction is not invitation to attorney to relitigate in District adverse findings of another court in procedurally fair hearing. In *re Gansler*, 2005, 889 A.2d 285. Attorney And Client ⇨ 59.18

Attorney's assertion, without further elaboration, that Maryland Bar Counsel had not provided, in Maryland attorney disciplinary hearing, a scintilla of proof that attorney, as prosecutor, knew or should have known that any extrajudicial comments he made about pending prosecutions would have substantial likelihood of materially prejudicing an adjudicative proceeding, in violation of Maryland professional conduct rule regarding trial publicity, did not establish infirmity of proof, as exception to rebuttable presumption, created by District of Columbia Bar Rule regarding reciprocal discipline, that attorney discipline would be the same in District as it was in original disciplining jurisdiction. In *re Gansler*, 2005, 889 A.2d 285. Attorney And Client ⇨ 59.18

The District of Columbia Bar Rule regarding reciprocal discipline creates a rebuttable presumption that the attorney discipline will be the same in the District as it was in the original disciplining jurisdiction. In *re Gansler*, 2005, 889 A.2d 285. Attorney And Client ⇨ 59.18

Public censure was appropriate disciplinary sanction in District of Columbia, as reciprocal discipline after attorney was publicly reprimanded in Maryland for his conduct, as a prosecutor, in violating Maryland professional conduct rule regarding trial publicity. In *re Gansler*, 2005, 889 A.2d 285. Attorney And Client ⇨ 59.18

Disbarment was appropriate reciprocal discipline in District of Columbia, after attorney was disbarred in New York for failing to seek reinstatement from interim suspension within six months; District of Columbia Bar Counsel recommended disbarment, attorney had not opposed disbarment, and disbarment was not so excessive as to be grossly unjust. In *re Reis*, 2005, 888 A.2d 1158. Attorney And Client ⇨ 59.18

A rebuttable presumption exists in a reciprocal attorney discipline proceeding that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In *re Reis*, 2005, 888 A.2d 1158. Attorney And Client ⇨ 59.18

New York attorney disciplinary proceeding, in which attorney was disbarred for failing to seek reinstatement from interim suspension within six months, did not involve miscarriage of justice, as exception to rebuttable presumption in reciprocal discipline proceeding that discipline will be same in District of Columbia as it was in original disciplining jurisdiction; New York disciplinary authorities took various extraordinary measures to locate and notify attorney of disciplinary charges, but attorney failed to respond or participate in New York disciplinary proceeding. In *re Reis*, 2005, 888 A.2d 1158. Attorney And Client ⇨ 59.18

In reciprocal attorney discipline cases in which neither Bar Counsel nor the attorney opposes identical discipline in the District of Columbia, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign disciplinary proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline. In *re Reis*, 2005, 888 A.2d 1158. Attorney And Client ⇨ 59.18

Indefinite suspension with ability to petition for reinstatement in five years warranted reciprocal discipline of five-year suspension with reinstatement conditioned on proof of fitness to practice law; the Massachusetts sanction was the functional equivalent of a suspension in the District of Columbia for the same length of time, coupled with a fitness requirement. In *re Gizzarelli*, 2005, 888 A.2d 1154. Attorney And Client ⇨ 59.18

Bar rules create a rebuttable presumption which favors the imposition of identical reciprocal discipline, even when the disciplinary sanction in question would not otherwise be available in the District of Columbia. In *re Gizzarelli*, 2005, 888 A.2d 1154. Attorney And Client ⇨ 59.18

When the imposition of reciprocal discipline is not contested by an attorney, the role of the Board on Professional Responsibility is restricted to reviewing the proceeding in the foreign court to be assured that no blatant miscarriage of justice would take place if reciprocal discipline were imposed. In *re Smith*, 2005, 886 A.2d 75. Attorney And Client ⇨ 59.18; Attorney And Client ⇨ 60

There is a presumption in favor of identical reciprocal attorney discipline, unless the attorney demonstrates, or the court finds on the face of the

record, by clear and convincing evidence, that one or more of the five exceptions set forth in the applicable bar rule applies. In *re Smith*, 2005, 886 A.2d 75. Attorney And Client ⇨ 53(1)

Attorney's disbursement of funds held in escrow for clients for his own personal use and failure to account for such funds upon request of disciplinary authority, in violation of attorney disciplinary rules and statutes of Maryland prohibiting intentional misappropriation of client funds, conduct involving dishonesty, fraud, deceit, or misrepresentation, failure to turn over records to Bar Counsel, on request, and misleading Bar Counsel with regard to status of trust funds, warranted imposition of reciprocal discipline of disbarment, absent evidence of miscarriage of justice. In *re Smith*, 2005, 886 A.2d 75. Attorney And Client ⇨ 59.18

In reciprocal action, disbarment was appropriate sanction for attorney who had been disbarred in Maryland for misappropriation and dishonesty. In *re Gallagher*, 2005, 886 A.2d 64. Attorney And Client ⇨ 59.18

Reciprocal attorney discipline proceedings are not a forum to reargue the foreign discipline. In *re Gallagher*, 2005, 886 A.2d 64. Attorney And Client ⇨ 60

Role of Court of Appeals in reciprocal attorney discipline cases differs from that in original discipline matters: (1) first, there is no need for a de novo repetition of the entire process, and the burden of persuasion is reversed; and (2) second, there is merit in the idea of granting due deference, for its sake alone, to the opinions and actions of a sister jurisdiction with respect to attorneys over whom courts share supervisory authority. In *re Gallagher*, 2005, 886 A.2d 64. Attorney And Client ⇨ 60

Since attorney was given notice, participated in the hearings, and was given a full opportunity to cross-examine witnesses in his Maryland disciplinary proceeding, attorney did not establish due process violation, and thus, District of Columbia would rely on the Maryland court's determination that attorney committed ethical violations when determining appropriate reciprocal discipline for attorney. In *re Gallagher*, 2005, 886 A.2d 64. Attorney And Client ⇨ 60; Constitutional Law ⇨ 4273(3)

A determination by the Board on Professional Responsibility that one or more of the exceptions to imposing identical reciprocal attorney discipline applies in a case is a question of law or ultimate fact; accordingly, review by the Court of Appeals is de novo. In *re Gallagher*, 2005, 886 A.2d 64. Attorney And Client ⇨ 57

Rule providing that identical discipline will be imposed in reciprocal attorney disciplinary case creates a rebuttable presumption that the discipline will be the same in the District of Columbia as it was in the original jurisdiction. In *re Gallagher*, 2005, 886 A.2d 64. Attorney And Client ⇨ 53(1)

District of Columbia Court of Appeals defers to findings of fact made by other courts in reciprocal

attorney disciplinary proceedings. In *re Gallagher*, 2005, 886 A.2d 64. Attorney And Client ⇨ 60

In reciprocal disciplinary cases where neither Bar Counsel nor attorney opposes identical discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline, a situation that would rarely, if ever, present itself. In *re DeWitt*, 2005, 884 A.2d 641. Attorney And Client ⇨ 59.18

In reciprocal disciplinary action, attorney who had been suspended for 60 days in California, with a stay of execution in favor of 18 month probation, for failing to counsel or maintain only those actions as appeared to him legal or just would be suspended from the practice of law in District of Columbia for a period of 60 days, with stay of execution of suspension in favor of 18 month term of probation; there was no miscarriage of justice in the California proceeding because attorney agreed to stipulated facts, admitted the violation, and consented to the sanction imposed by the Supreme Court of California. In *re DeWitt*, 2005, 884 A.2d 641. Attorney And Client ⇨ 59.18; Attorney And Client ⇨ 60

In reciprocal disciplinary cases where neither Bar Counsel nor attorney oppose identical discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline, a situation that would rarely, if ever, present itself. In *re Brennan*, 2005, 884 A.2d 639. Attorney And Client ⇨ 59.18

In reciprocal disciplinary action, 90 day suspension was appropriate for attorney who had been suspended in Maryland for 90 days for failing to file her federal and state income tax returns; there was no miscarriage of justice in the Maryland proceeding because attorney received notice of the proceeding and was represented by counsel when she voluntarily consented to the Maryland discipline. In *re Brennan*, 2005, 884 A.2d 639. Attorney And Client ⇨ 59.18

Circumstances warranted imposition of reciprocal discipline upon attorney sanctioned with nine-month suspension for lack of competence and diligence and other violations of professional conduct rules of Maryland, with reinstatement in the District of Columbia conditioned on proof of readmission in Maryland or other affirmative showing of compliance with conditions imposed by Maryland court, where Board on Professional Responsibility so recommended and attorney did not report his suspension to Bar Counsel or participate in proceedings before Board, filed no response to statement on reciprocal discipline, and filed no exceptions to Board's recommendation. In *re Joyner*, 2005, 884 A.2d 91. Attorney And Client ⇨ 59.18

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When the imposition of reciprocal discipline is not contested by the attorney in an attorney disciplinary case, the Board on Professional Responsibility, at most, must review the proceeding in the foreign court to be assured that no blatant miscarriage of justice would take place if reciprocal discipline were imposed. In *re Chasnoff*, 2005, 884 A.2d 61. Attorney And Client ⇨ 59.18

Reciprocal disbarment of attorney was warranted; attorney was disbarred in Maryland, the Board on Professional Responsibility found no evidence that the proceeding in Maryland lacked due process or that there was insufficient proof, and attorney's misconduct in Maryland, which involved dishonesty, would justify disbarment if committed in the District of Columbia. In *re Chasnoff*, 2005, 884 A.2d 61. Attorney And Client ⇨ 59.18

Reciprocal discipline of a one-year suspension with reinstatement conditioned on proof of fitness to practice law was warranted by one-year suspension in Illinois based on charges of threatening to present criminal charges to gain advantage in a civil matter, intentionally degrading a witness or other person before a tribunal, communicating with represented party without lawyer's consent, making false statements of material fact, engaging in dishonesty, fraud, deceit, or misrepresentation, and engaging in conduct prejudicial to the administration of justice. In *re Ras*, 2005, 884 A.2d 44. Attorney And Client ⇨ 59.18

In uncontested cases involving reciprocal discipline, the most the Board on Professional Responsibility should consider itself obligated to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline. In *re Ras*, 2005, 884 A.2d 44. Attorney And Client ⇨ 59.18

In uncontested cases involving reciprocal discipline, review by Supreme Court and Board on Professional Responsibility is limited, and the presumption is in favor of identical reciprocal discipline, unless the attorney demonstrates, or the court finds on the face of the record, by clear and convincing evidence, that one or more of the five exceptions to reciprocal discipline applies. In *re Ras*, 2005, 884 A.2d 44. Attorney And Client ⇨ 53(1); Attorney And Client ⇨ 53(2); Attorney And Client ⇨ 57

Attorney's suspension in District of Columbia, as identical reciprocal discipline following his suspension in Nevada, would run prospectively, where attorney did not request that his suspension run concurrently with the Nevada suspension. In *re Hagendorf*, 2005, 881 A.2d 616. Attorney And Client ⇨ 60

Imposition of identical reciprocal discipline in District of Columbia, after attorney was suspended in Nevada for five months, with all but 60 days conditionally stayed, was mandatory, because the discipline imposed in Nevada fell within range of sanctions that would be considered in District of Columbia for attorney's violation of disciplinary rules regarding candor toward tribunal, relations

with opposing counsel, truthfulness in statements to others, prohibition of conduct involving dishonesty, fraud, deceit, or misrepresentation, and prohibition of conduct prejudicial to administration of justice. In *re Hagendorf*, 2005, 881 A.2d 616. Attorney And Client ⇨ 59.18

A rebuttable presumption exists that the reciprocal discipline of attorney will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In *re Hagendorf*, 2005, 881 A.2d 616. Attorney And Client ⇨ 53(1)

No obvious miscarriage of justice would result from imposition of identical reciprocal discipline in District of Columbia, after attorney was suspended in Nevada for five months, with all but 60 days conditionally stayed, for conduct violating Nevada disciplinary rules on candor toward tribunal, relations with opposing counsel, truthfulness in statements to others, prohibition of conduct involving dishonesty, fraud, deceit, or misrepresentation, and prohibition of conduct prejudicial to administration of justice; in the Nevada proceeding, attorney received proper notice and was represented by counsel. In *re Hagendorf*, 2005, 881 A.2d 616. Attorney And Client ⇨ 59.18

Attorney's conduct of signing names of co-counsel to document without noting in every instance that he was executing document on their behalf warranted public censure, which was reciprocal discipline or punishment identical to that imposed in other state in which attorney was licensed to practice law. In *re Howard*, 2005, 879 A.2d 681. Attorney And Client ⇨ 59.18

Court of Appeals presumptively imposes identical reciprocal discipline unless the attorney demonstrates by clear and convincing evidence that the case falls within one of five specified exceptions to reciprocal discipline. In *re Howard*, 2005, 879 A.2d 681. Attorney And Client ⇨ 53(1)

In reciprocal disciplinary action, eighteen month suspension was appropriate sanction for attorney who was reprimanded in Maryland for intentionally misleading a federal court by intentionally filing a false status report and attaching documents that he had fabricated in order to support his fraudulent report. In *re Parshall*, 2005, 878 A.2d 1253. Attorney And Client ⇨ 59.18

In reciprocal discipline cases, there is a presumption favoring the imposition of the same discipline as that of the original disciplining jurisdiction. In *re Ventriglia*, 2005, 878 A.2d 495. Attorney And Client ⇨ 53(1)

Attorney's failure to file and pay federal and state income tax returns for three consecutive years and to pay self-employment tax for four consecutive years warranted suspension of bar license for two years, with execution of suspension stayed in deference to probation, which was reciprocal discipline, identical to that imposed by other state in which attorney was licensed. In *re Ventriglia*, 2005, 878 A.2d 495. Attorney And Client ⇨ 59.18

Assuming that dismissal of disciplinary charges, subject to certain terms, against attorney in Virgi-

nia amounted to “discipline” in District of Columbia, evidence of additional violations presented in proceedings in District of Columbia supported refusal of Court of Appeals to impose reciprocal jurisdiction upon attorney originally subjected to discipline in Virginia; findings of misconduct in District of Columbia went beyond findings in Virginia that attorney failed to keep his client advised, and included finding that attorney unduly burdened administration of justice and engaged in sustained pattern of misconduct warranting suspension. In *re* Thyden, 2005, 877 A.2d 129. Attorney And Client ⇨ 59.18

Attorney’s unsubstantiated assertion that imposition of reciprocal discipline would be grave injustice was insufficient to warrant imposition of any lesser sanction than disbarment for attorney’s intentional misrepresentations during bar application process. In *re* Demos, 2005, 875 A.2d 636. Attorney And Client ⇨ 53(2)

Imposition in District of Columbia of greater discipline than that imposed upon attorney by original disciplining court, under the “substantially different discipline” exception to general rule of identical reciprocal discipline, did not implicate full faith and credit provision of United States Constitution, federal statute setting forth doctrine of full faith and credit among and between state courts, or reciprocity principles of recognition of disciplinary judgments between states. In *re* Demos, 2005, 875 A.2d 636. Judgment ⇨ 815; Judgment ⇨ 829(3)

Attorney’s intentional misrepresentations on application for admission to Arizona federal bar warranted disbarment, where discipline imposed in Arizona federal court was not within range of possible sanctions in District of Columbia and was substantially less severe than sanction to which attorney would have been subject had his misconduct occurred in District of Columbia. In *re* Demos, 2005, 875 A.2d 636. Attorney And Client ⇨ 59.18

For purposes of reciprocal attorney disciplinary proceedings, being stricken from the rolls of attorneys in the Arizona federal court is the functional equivalent of an indefinite suspension in the District of Columbia. In *re* Demos, 2005, 875 A.2d 636. Attorney And Client ⇨ 59.18

For purposes of determining whether the “substantially different discipline” exception warrants greater or lesser discipline in reciprocal attorney discipline proceedings, if the discipline which would be imposed in the District of Columbia would be different from that of the original disciplining court, the Court of Appeals must then decide whether such difference is substantial. In *re* Demos, 2005, 875 A.2d 636. Attorney And Client ⇨ 59.18

For purposes of determining whether the “substantially different discipline” exception warrants greater or lesser discipline in reciprocal attorney discipline proceedings, “same punishment” is defined as a sanction within the range of sanctions that would be imposed for the same misconduct.

In *re* Demos, 2005, 875 A.2d 636. Attorney And Client ⇨ 59.18

In reciprocal disciplinary action, disbarment was appropriate sanction for attorney who was disbarred in New York for misappropriating approximately \$108,000 from various clients. In *re* Hendin, 2005, 873 A.2d 1100. Attorney And Client ⇨ 59.18

Disbarment was warranted as reciprocal discipline in District of Columbia, following attorney’s disbarment in Virginia, which was based upon order issued by federal Bankruptcy Court for failing to appear for several hearings, and in Maryland for engaging in the unauthorized practice of law. In *re* Harris-Smith, 2005, 871 A.2d 1183. Attorney And Client ⇨ 59.18

Imposition of identical reciprocal discipline in attorney discipline proceeding was mandatory, even assuming that Court of Appeals would impose different sanction if case were prosecuted in District of Columbia as original matter, where three-year suspension and fitness requirement imposed in original disciplining jurisdiction fell within range of appropriate sanctions in District of Columbia. In *re* Winick, 2005, 866 A.2d 51. Attorney And Client ⇨ 59.18

Rebuttable presumption exists that reciprocal attorney discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction; however, the Court of Appeals may impose a different sanction if it determines both that the misconduct in question would not have resulted in the same punishment in the District of Columbia as it did in the disciplining jurisdiction, and that the difference is substantial. In *re* Winick, 2005, 866 A.2d 51. Attorney And Client ⇨ 53(1); Attorney And Client ⇨ 59.18

Suspension for 30 days was warranted as reciprocal discipline in District of Columbia, following attorney’s public reprimand in Virginia for representing multiple criminal defendants facing prosecution arising out of same matter, where attorney had prior discipline in District of Columbia for commingling personal and client funds, and the underlying conflict of interest in representing the multiple criminal defendants was obvious. In *re* McGann, 2004, 863 A.2d 864. Attorney And Client ⇨ 59.18

Two-year suspension, with execution stayed for three years conditioned upon attorney not being held by North Carolina State Bar to be in violation of its disciplinary order suspending him for two years subject to conditional stay, was appropriate reciprocal discipline in District of Columbia, after attorney was convicted of assault of female and received suspended 45-day jail sentence in North Carolina. In *re* Key, 2004, 863 A.2d 837. Attorney And Client ⇨ 59.18

Thirteen-month suspension of attorney in another state warranted identical reciprocal discipline to begin upon the filing of affidavit of compliance with suspension order; no exceptions were filed to the recommendation by the Board on Professional Re-

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sponsibility. In re Meade, 2004, 863 A.2d 812. Attorney And Client ⇨ 59.18

In reciprocal disciplinary proceeding, attorney's unauthorized practice of law in Maryland, for which he was disbarred, constituted "misconduct" within the meaning of District of Columbia's ethical rules. In re Barneys, 2004, 861 A.2d 1270. Attorney And Client ⇨ 37.1

In reciprocal disciplinary case, disbarment was appropriate sanction for attorney who was disbarred in Maryland for the unauthorized practice of law, and sanction of disbarment yielded no manifest injustice; attorney engaged in deliberate and persistent misconduct by representing at least five clients in Maryland state courts while unlicensed. In re Barneys, 2004, 861 A.2d 1270. Attorney And Client ⇨ 59.18

Since attorney failed to respond to the show cause order or participate in the reciprocal disciplinary proceedings before the Board on Professional Responsibility, attorney, who was disbarred in Maryland for the unauthorized practice of law, could not challenge the imposition of reciprocal disbarment unless he could meet the "demanding" miscarriage of justice standard. In re Barneys, 2004, 861 A.2d 1270. Attorney And Client ⇨ 57

In reciprocal disciplinary case, disbarment was appropriate sanction for attorney who was disbarred in Maryland for the unauthorized practice of law, and sanction of disbarment yielded no manifest injustice; attorney engaged in deliberate and persistent misconduct by representing at least five clients in Maryland state courts while unlicensed. In re Barneys, 2004, 861 A.2d 1270. Attorney And Client ⇨ 59.18

Procedural safeguards, before imposition of disbarment as reciprocal discipline in District of Columbia, were sufficient, though attorney did not participate in District of Columbia reciprocal discipline proceeding; in original disciplinary proceeding in which attorney was disbarred in Georgia, and in prior reciprocal discipline proceeding in which attorney was disbarred in Maryland, attorney participated and offered explanations and potential mitigating circumstances that were rejected. In re Roberson, 2004, 861 A.2d 1267. Attorney And Client ⇨ 54

Disbarment was warranted as reciprocal discipline in District of Columbia, following attorney's disbarment in Georgia for dishonesty, failure to promptly deliver and account for trust funds, conflicts of interest, and excessive fees, in medical malpractice cases. In re Roberson, 2004, 861 A.2d 1267. Attorney And Client ⇨ 59.18

A rebuttable presumption exists, in a reciprocal attorney discipline proceeding, that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In re Roberson, 2004, 861 A.2d 1267. Attorney And Client ⇨ 53(1)

Attorney, who had been disbarred in another state, was entitled to a hearing before the Committee on Admissions (COA) on his application for admission to the Bar; attorney contended that an

exception to the reciprocal discipline rule applied and that the discipline imposed in other state was substantially more severe than the sanction that would have been imposed had attorney committed misconduct within state. In re Ramos, 2004, 860 A.2d 843. Attorney And Client ⇨ 7

Attorney had sufficient notice of reciprocal disciplinary proceeding in District of Columbia, following his disbarment in Maryland, though Board on Professional Responsibility was not able to contact attorney, where attorney's current address was unknown, he failed to inform the bar of his current address, and the Board tried to contact him at his previous addresses but those attempts were unsuccessful. In re Powell, 2004, 860 A.2d 836. Attorney And Client ⇨ 48

Disbarment would be imposed as reciprocal discipline in District of Columbia, following attorney's disbarment in Maryland; rebuttable presumption favored identical discipline, nothing in the record indicated that reciprocal discipline was inappropriate, the Board on Professional Responsibility recommended disbarment, and Board's recommendation was entitled to heightened deference because it was unopposed. In re Powell, 2004, 860 A.2d 836. Attorney And Client ⇨ 53(1); Attorney And Client ⇨ 57; Attorney And Client ⇨ 59.18

In reciprocal disciplinary action, six-month suspension, as opposed to 90-day suspension, was appropriate sanction for attorney who was suspended in Maryland for ninety days for negligently misappropriating client funds; six-month suspension was consistent with the discipline usually meted out in District of Columbia for negligent misappropriation.. In re Mirsky, 2004, 860 A.2d 363. Attorney And Client ⇨ 59.18

While there is a rebuttable presumption that, in reciprocal attorney discipline cases, the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction, Court of Appeals may impose a different sanction if it determines that: (1) the misconduct in question would not have resulted in the same punishment in the District of Columbia as it did in the disciplining jurisdiction; and (2) the difference is substantial. In re Mirsky, 2004, 860 A.2d 363. Attorney And Client ⇨ 59.18

In reciprocal disciplinary case, public censure was appropriate sanction for attorney who was reprimanded in Maryland for neglect, failure to provide competent representation, failure to communicate, and conduct prejudicial to the administration of justice; public censure in the District of Columbia was the functional equivalent of a public reprimand in Maryland. In re Tsai, 2004, 860 A.2d 335. Attorney And Client ⇨ 59.18

In reciprocal disciplinary proceeding, indefinite suspension was appropriate sanction for attorney who had been indefinitely suspended in Maryland for making false representations to his law firm and to clients with respect to services he had claimed to have performed on their behalf, and attorney could apply for reinstatement after he was reinstated in Maryland or after five years,

whichever occurred first. In re Hardwick, 2004, 859 A.2d 1063. Attorney And Client ⇨ 59.18

Reciprocal discipline of disbarment was warranted for attorney who was disbarred in Maryland for failing to return funds to former client in a timely fashion, who falsified evidence to cover up that fact, and who then lied to both Bar Counsel and a circuit judge about his actions; there was nothing in record to indicate that reciprocal discipline was inappropriate, and recommendation for disbarment was unopposed. In re Blum, 2004, 859 A.2d 633. Attorney And Client ⇨ 59.18

Failure of attorney, who was suspended for 30 days in Maryland for writing a check on a trust account which reduced its balance to about \$300 below the escrowed funds belonging to a third party, to file an exception to the Board on Professional Responsibility's report and recommendation acted as a concession that reciprocal discipline was warranted and that the Board's proposed sanction of six month suspension was appropriate. In re McClain, 2004, 856 A.2d 589. Attorney And Client ⇨ 57

Attorney who failed to respond to order of Court of Appeals to show cause why reciprocal discipline should not be imposed effectively defaulted on the issue of whether such cause existed. In re Grant, 2004, 851 A.2d 428. Attorney And Client ⇨ 57

Attorney's failure to file an opposition to the report and recommendation by the Board on Professional Responsibility was a concession that reciprocal discipline was warranted. In re Grant, 2004, 851 A.2d 428. Attorney And Client ⇨ 57

Identical reciprocal discipline of disbarment following disbarment in New York was permissible without adversarial testing of the allegations of misappropriation of client funds, conflict of interest, dishonesty, fraud, deceit or misrepresentation, and conduct prejudicial to the administration of justice; the attorney did not participate in the proceedings and had tendered an affidavit of resignation that he could not defend against the allegations in New York, and the affidavit assured Court of Appeals that no obvious miscarriage of justice would result from the imposition of identical discipline. In re Grant, 2004, 851 A.2d 428. Attorney And Client ⇨ 59.18

In a reciprocal attorney discipline case, there is a general presumption that discipline in the District of Columbia should mirror the sanction imposed by the first jurisdiction. In re Drager, 2004, 846 A.2d 992. Attorney And Client ⇨ 53(1)

Misconduct for which attorney was disbarred in two out-of-state disciplinary proceedings warranted reciprocal sanction of disbarment, where attorney did not contest imposition of disbarment in out-of-state proceedings or recommendation of disbarment in District of Columbia. In re Drager, 2004, 846 A.2d 992. Attorney And Client ⇨ 59.18

A rebuttable presumption exists that the reciprocal discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction; however, the Board on Professional Responsibility and the Court of Appeals may im-

pose a different sanction if it determines: (1) the misconduct in question would not have resulted in the same punishment in the District of Columbia as it did in the disciplining jurisdiction, and (2) the difference is substantial. In re Spitzer, 2004, 845 A.2d 1137. Attorney And Client ⇨ 53(1); Attorney And Client ⇨ 59.18

For purposes of a reciprocal attorney disciplinary proceeding, the Board on Professional Responsibility and Court of Appeals may impose a different sanction than that imposed in original disciplining jurisdiction if the misconduct in question would not have resulted in the same punishment in District of Columbia as it did in the disciplining jurisdiction, and the difference was substantial. In re Ellis, 2004, 841 A.2d 1264. Attorney And Client ⇨ 59.18

There is a rebuttable presumption that the discipline to be imposed in a reciprocal attorney discipline proceeding will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In re Ellis, 2004, 841 A.2d 1264. Attorney And Client ⇨ 53(1)

Attorney's misconduct in the federal circuit court, in failing to respond to a show cause order, which result in his contingent, indefinite suspension there, warranted substantially different discipline for purposes of reciprocal disciplinary proceedings in District of Columbia, where attorney's ultimate discipline in federal court was premised not on that circuit's substantive evaluation of attorney's ethical offenses, but on District's ultimate evaluation of discipline to be imposed. In re Ellis, 2004, 841 A.2d 1264. Attorney And Client ⇨ 59.18

Revocation of license to practice law in Virginia was functionally equivalent, and equivalent in all but name, to disbarment in District of Columbia, and thus, Court of Appeals would disbar attorneys, as reciprocal discipline for revocation of their licenses to practice in Virginia. In re Laibstain, 2004, 841 A.2d 1259. Attorney And Client ⇨ 59.18

The Bar Rules create a rebuttable presumption that the reciprocal discipline imposed in the District of Columbia will be the same attorney discipline imposed in the original disciplining jurisdiction. In re Laibstain, 2004, 841 A.2d 1259. Attorney And Client ⇨ 53(1)

Attorney who made no effort to rebut the presumption of reciprocal discipline, effectively defaulted on the issue. In re Powers, 2003, 838 A.2d 311. Attorney And Client ⇨ 53(1)

Indefinite suspension from the practice of law was warranted as reciprocal discipline following indefinite suspension by agreement in another jurisdiction; the attorney made no effort to rebut the presumption of reciprocal discipline. In re Powers, 2003, 838 A.2d 311. Attorney And Client ⇨ 59.18

A right to seek reinstatement after five years of disbarment was appropriate as reciprocal discipline despite right to seek reinstatement in the other state after only eight years. In re Ain, 2003, 837

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A.2d 908. Attorney And Client ⇨ 59.18; Attorney And Client ⇨ 61

There is a rebuttable presumption that the sanction imposed in a reciprocal discipline case will be identical to that imposed by the original disciplining court. In *re* Dunietz, 2003, 832 A.2d 161. Attorney And Client ⇨ 53(1)

Court of Appeals presumptively imposes identical reciprocal discipline, unless the attorney demonstrates by clear and convincing evidence that the case falls within one of five specified exceptions to reciprocal discipline. In *re* Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 59.18

While the plain language of rule establishing standards for reciprocal discipline places the burden on the disciplined attorney to establish by clear and convincing evidence that a lesser sanction is warranted, the Office of Bar Counsel also has standing to object to the imposition of identical discipline and may recommend a different sanction when it believes an exception to reciprocal discipline applies; however, such instances should be rare. In *re* Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 59.18

Underlying strict standard in reciprocal attorney discipline cases is not only the notion that another jurisdiction has already afforded the attorney a full disciplinary proceeding, but also the idea that there is merit in according deference, for its own sake, to the actions of other jurisdictions with respect to the attorneys over whom states share supervisory authority. In *re* Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 59.18

Standard in reciprocal bar discipline proceedings comports with constitutional due process requirements because the attorney either has had an evidentiary hearing or had the right to one. In *re* Zdravkovich, 2003, 831 A.2d 964. Constitutional Law ⇨ 427(3)

Principles of collateral estoppel apply in reciprocal attorney discipline cases. In *re* Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 59.18; Attorney And Client ⇨ 60

Attorney who had been indefinitely suspended in Maryland was not entitled to relitigate or collaterally attack the findings or judgment of the Maryland court in connection with reciprocal disciplinary proceeding in District of Columbia. In *re* Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 59.18

It was duty of attorney who had been indefinitely suspended in Maryland to prove by clear and convincing evidence that reciprocal discipline should not be imposed by District of Columbia. In *re* Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 59.18

Generally, identical discipline is imposed in reciprocal attorney discipline cases. In *re* Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 59.18

In reciprocal attorney discipline cases for which the original disciplining court has developed no factual record but has imposed indefinite suspension, a form of discipline District of Columbia does

not employ, with no minimum period, District of Columbia court imposes indefinite suspension with the right to apply for reinstatement after being reinstated in the original jurisdiction or after five years, whichever comes first. In *re* Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 59.18

When the original disciplining jurisdiction imposes indefinite suspension, a form of discipline District of Columbia does not employ, with the right to apply for reinstatement after a minimum period of time, District of Columbia courts, in reciprocal attorney discipline proceeding, views such sanctions as the functional equivalent of a suspension for the length of time before the right to reapply is allowed, coupled with a requirement of fitness. In *re* Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 59.18

Attorney's reciprocal discipline suspension would not be imposed *nunc pro tunc* to the date on which interim order was entered suspending attorney, who had been indefinitely suspended in Maryland, in District of Columbia; at the time of oral argument, attorney still had not filed the affidavit required under disciplinary rule, no period of suspension would begin to run for reinstatement purposes until the filing of such an affidavit, and attorney had received ample notice of the affidavit requirement. In *re* Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 59.18

Where attorney was indefinitely suspended in Maryland and indefinite suspension was a form of discipline District of Columbia did not employ, a fixed period of suspension constituted appropriate reciprocal discipline because Maryland had already conducted a full evidentiary hearing, and accordingly, attorney would be suspended in the District of Columbia for nine months and, after that nine month period, attorney would be required to demonstrate his fitness to practice law before reinstatement. In *re* Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 59.18

Engaging in the unauthorized practice of law constitutes misconduct in the District of Columbia and is grounds for disbarment in a reciprocal discipline case. In *re* Mbakpuo, 2003, 829 A.2d 217. Attorney And Client ⇨ 37.1; Attorney And Client ⇨ 59.18

Although no reciprocal discipline would imposed for attorney's failure to pay amount owed on judgment entered for non-payment of promissory note signed in partial settlement of West Virginia malpractice action, attorney's remaining misconduct, including failing to respond to and cooperate during disciplinary investigation, warranted reciprocal discipline of 30-day suspension. In *re* Swisher, 2003, 827 A.2d 807. Attorney And Client ⇨ 59.18

Presumption in favor of identical reciprocal discipline applied to disbar attorney, who had been disbarred in Maryland. In *re* McGowan, 2003, 827 A.2d 31. Attorney And Client ⇨ 53(1)

Reciprocal disbarment was warranted against attorney who was disbarred in Maryland for intentional misappropriation, unauthorized practice of law while suspended, failing to respond to Bar

Counsel's inquiries, failing to communicate with clients, failing to forward client files in a timely manner after termination, and failing to forward in a timely manner funds owed to a third party. In re Koven, 2003, 815 A.2d 770. Attorney And Client ⇨ 59.18

Attorney's receipt of public censure in another jurisdiction for failure to respond to numerous notices and requests for response regarding his failure to register in that jurisdiction warranted imposition of identical reciprocal discipline. In re Smith, 2002, 812 A.2d 931. Attorney And Client ⇨ 59.18

Reciprocal discipline could be imposed against attorney, pursuant to rule prohibiting attorneys from committing criminal act that reflected adversely on attorney's honesty, trustworthiness, or fitness as a lawyer in other respects, for his misconduct, as found by Maryland Court of Appeals, in proposing, over the Internet, to engage in sexual conduct with a child, even though Maryland Court of Appeals had determined that attorney's misconduct had violated rule prohibiting conduct prejudicial to the administration of justice, and attorney's misconduct did not fall within District of Columbia's counterpart to that rule, where attorney did not contest imposition of reciprocal discipline. In re Childress, 2002, 811 A.2d 805. Attorney And Client ⇨ 59.18

The Court of Appeals adheres to the principle that, in reciprocal discipline cases where neither Bar Counsel nor the attorney opposes identical discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline—a situation that the Court anticipates would rarely, if ever, present itself. In re Childress, 2002, 811 A.2d 805. Attorney And Client ⇨ 59.18

Attorney's conduct in Maryland in committing criminal conduct under Virginia law when, over the internet, he proposed to engage in sexual conduct with a child under the age of 14 years, warranted imposition of reciprocal discipline, specifically a one-year suspension with a fitness requirement. In re Childress, 2002, 811 A.2d 805. Attorney And Client ⇨ 59.18

Attorney's conduct in Kansas, in having exhibited a lack of competence and failed to cooperate in a disciplinary investigation, which resulted in indefinite suspension, warranted imposition of reciprocal discipline, specifically a three-year suspension from practice of law with a fitness requirement. In re Cole, 2002, 809 A.2d 1226. Attorney And Client ⇨ 59.18

Absent attorney's participation in foreign disciplinary proceeding, Board on Professional Responsibility was required to do no more than review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline. In re Cole, 2002, 809 A.2d 1226. Attorney And Client ⇨ 59.18

There is a rebuttable presumption that the sanction imposed by the District of Columbia Court of Appeals in a reciprocal attorney discipline case will be identical to that imposed by the original disciplining court. In re Lippman, 2002, 806 A.2d 1224. Attorney And Client ⇨ 53(1)

Reciprocal disbarment in the District of Columbia was the appropriate sanction for attorney who had been disbarred in New York for intentionally converting client funds to his personal use, lying under oath, and engaging in a pervasive and egregious pattern of neglecting client matters; the attorney's failure to file any exception to the Board on Professional Responsibility's report and recommendation was treated as a concession that reciprocal disbarment was warranted. In re Lippman, 2002, 806 A.2d 1224. Attorney And Client ⇨ 59.18

Attorney's failure to cooperate with disciplinary investigation in Maryland, for which he was publicly reprimanded, warranted reciprocal discipline of public censure in the District of Columbia. In re Bridges, 2002, 805 A.2d 233. Attorney And Client ⇨ 59.18

Attorney's conduct in depositing personal funds into his trust account, and bad faith filing and voluntarily dismissing multiple bankruptcy petitions and assisting his wife in doing the same in an effort to prevent the foreclosure of their residence, warranted imposition of identical reciprocal discipline, specifically, 18-month suspension from practice of law, with all but 60 days stayed. In re Schwartz, 2002, 802 A.2d 339. Attorney And Client ⇨ 59.18

Ninety-day suspension, followed by unsupervised probation for nine months, was appropriate discipline for attorney who had been disciplined in Ohio for misconduct stemming from conviction of four misdemeanor counts charging unauthorized access to computer systems, which indicated that attorney had revealed confidential information relating to a former client, and committed criminal acts reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer. In re Ventura, 2002, 799 A.2d 1200. Attorney And Client ⇨ 59.18

Court of Appeals would depart from the imposition of identical reciprocal discipline and order disbarment for attorney's converting client's funds in estate administration case, even though foreign jurisdiction imposed a two-year suspension, as a finding of intentional misappropriation in the District of Columbia warranted such sanction. In re Ladas, 2002, 798 A.2d 1067. Attorney And Client ⇨ 59.18

Superior court's findings of fact that attorney "engaged in serious conflicts of interest over a sustained period of time resulting in personal enrichment at expense of his clients" in his civil suit for declaratory judgment against two former clients was not a permissible basis for concluding that attorney's conduct was dishonest so as to warrant reciprocal discipline in excess of that imposed by Maryland Court of Appeals, where Mary-

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land did not find dishonesty by any standard, as that violation had yet to be established in a disciplinary procedure that included notice, an opportunity to be heard, and sufficient proof of the misconduct, and attorney did not admit to any facts regarding the violations he conceded, save only that the misconduct took place nearly 15 years earlier and was first addressed by the superior court. In re Maxwell, 2002, 798 A.2d 525. Attorney And Client ⇨ 59.18

In a reciprocal discipline case, there is a rebuttable presumption that the discipline imposed on an attorney in the District of Columbia will mirror that imposed by the original disciplining jurisdiction. In re Maxwell, 2002, 798 A.2d 525. Attorney And Client ⇨ 59.18

Attorney in reciprocal attorney disciplinary proceeding could not raise attacks against Maryland court's findings that were raised in prior Maryland disciplinary proceedings, namely that conclusions of Maryland Court of Appeals were unsupported by factual record, and that Maryland Court of Appeals defied all facts, law, and logic in straining to establish dishonesty, and knowing and intentional misappropriation, given that attorney could not attempt to re-litigate facts already determined in Maryland. In re Sheridan, 2002, 798 A.2d 516. Attorney And Client ⇨ 56

Appellate court's role in reciprocal discipline cases is different from that in disciplinary matters originated in jurisdiction of District of Columbia, namely first, there is no need for a de novo repetition of the entire process, and the burden of persuasion is reversed, and second, there is merit in the idea of granting due deference, for its sake alone, to the opinions and actions of a sister jurisdiction with respect to attorneys over whom shared supervisory authority is exercised. In re Sheridan, 2002, 798 A.2d 516. Attorney And Client ⇨ 59.18

In reciprocal attorney disciplinary matter, Court of Appeals would not disturb findings of Maryland Court of Appeals in prior disciplinary action, where Maryland court found by clear and convincing evidence that, at time he acted, attorney knew or should have known that actions were unethical, and concluded, based on attorney's misrepresentations, that he acted dishonestly. In re Sheridan, 2002, 798 A.2d 516. Attorney And Client ⇨ 59.18

In reciprocal attorney disciplinary proceedings, when Bar Counsel, the Board of Professional Responsibility, or the attorney makes a showing that a different sanction is warranted in District of Columbia than in the original jurisdiction, the appellate court has authority under the Bar Rules to impose a greater sanction than that imposed in the other jurisdiction. In re Sheridan, 2002, 798 A.2d 516. Attorney And Client ⇨ 59.18

In reciprocal attorney disciplinary matter, to determine whether imposition of a different sanction is warranted, the Court of Appeals will undertake a two-step inquiry: (1) whether the misconduct in question would not have resulted in the same punishment here as it did in the disciplining

jurisdiction, and (2) where discipline would be different, whether the difference is substantial, and in considering the first step, the Court of Appeals will examine whether the discipline imposed by the foreign jurisdiction is within the range of sanctions that would be imposed for the same misconduct in the District of Columbia. In re Sheridan, 2002, 798 A.2d 516. Attorney And Client ⇨ 59.18

In reciprocal attorney disciplinary action, disbarment was warranted sanction for misconduct involving misappropriation of client funds, even though Maryland court found that actions were not intentionally fraudulent, conduct resulted only in indefinite suspension in Maryland, attorney could apply to practice four years earlier in Maryland after suspension than in District of Columbia after disbarment, and after first misappropriation, client declared bankruptcy and no longer existed as corporate entity, given that another corporation purchased client's receivables, attorney had history of prior discipline in District of Columbia and Virginia, and Maryland lacked *Addams* rule, which provided that in District of Columbia, disbarment was warranted sanction for misappropriation. In re Sheridan, 2002, 798 A.2d 516. Attorney And Client ⇨ 59.18

Identical reciprocal discipline of six months suspension from practice of law in District of Columbia was warranted after attorney was disciplined in Virginia for ethical violations that occurred in Virginia which included neglecting a legal matter, failing to keep a client reasonably informed, knowingly making a false statement, and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. In re Shelnut, 2002, 796 A.2d 672. Attorney And Client ⇨ 59.18

One-year suspension, with requirement of demonstrating fitness to practice law as condition of reinstatement, was appropriate reciprocal discipline for attorney who had been suspended in New York for one year or until further order of that court for misconduct that included making misrepresentations to a client regarding the status of a lawsuit, engaging in a sexual relationship with the client during the course of the attorney-client relationship, preparing a will for a client designating himself as executor and guardian of the property of the client's infant son without making required disclosures regarding potential conflict of interest, and neglecting another client's criminal matter, even though District of Columbia did not have counterpart to New York disciplinary rule forbidding conduct that adversely reflects on one's fitness to practice law. In re Alongi, 2002, 794 A.2d 605. Attorney And Client ⇨ 59.18; Attorney And Client ⇨ 61

Attorney's use of client trust account as personal bank account during his relocation from one foreign jurisdiction in which he was admitted to practice law to another foreign jurisdiction in which he was also admitted, warranted imposition of reciprocal discipline, namely, two-year suspension from practice of law, with all but 60 days stayed in favor of two years of unsupervised probation on conditions, nunc pro tunc to date on which attorney filed

required affidavit. In re McDonough, 2002, 792 A.2d 245. Attorney And Client ⇨ 59.18

Rebuttable presumption exists in favor of identical reciprocal attorney discipline. In re McDonough, 2002, 792 A.2d 245. Attorney And Client ⇨ 53(1)

Sanction of disbarment as reciprocal discipline was warranted where attorney resigned in lieu of discipline and supreme court rule governing original disciplining court treated resignation in lieu of discipline as disbarment for all purposes. In re Ezer, 2002, 790 A.2d 550. Attorney And Client ⇨ 59.18

There is a rebuttable presumption that the sanction imposed by District of Columbia court in a reciprocal attorney discipline case will be identical to that imposed by the original disciplining court. In re Rocca, 2001, 786 A.2d 560. Attorney And Client ⇨ 59.18

Disbarment, with attorney being eligible to apply for reinstatement in five years, was appropriate reciprocal discipline for attorney who was permanently disbarred in New Jersey for engaging in conduct involving fraud, deceit, dishonesty, and misrepresentation. In re Rocca, 2001, 786 A.2d 560. Attorney And Client ⇨ 59.18

One-year suspension, with requirement of demonstrating fitness to practice law as condition of reinstatement, and with right to apply for vacatur of fitness requirement if attorney was summarily reinstated to practice law in Maryland, was appropriate reciprocal discipline for attorney who had been indefinitely suspended in Maryland, with right to apply for readmission to practice in Maryland after one year, for failing to file and pay state and federal income taxes. In re Atkinson, 2001, 785 A.2d 318. Attorney And Client ⇨ 59.18

Reciprocal (i.e., identical) discipline is imposed upon an attorney disciplined in a foreign jurisdiction unless the attorney demonstrates by clear and convincing evidence that an exception set forth in the Bar rules applies. In re Harper, 2001, 785 A.2d 311. Attorney And Client ⇨ 59.18

Reciprocal discipline of attorney in form of disbarment was warranted, based on disbarment issued in Maryland and attorney's failure to contest the reciprocal disciplinary action; attorney had set up an office with a Maryland lawyer and a pseudonymous assistant to furnish cover and had made false representations that he was licensed to practice in Maryland, all with the purpose to take over the inventory of pending cases of previously disbarred lawyer. In re Harper, 2001, 785 A.2d 311. Attorney And Client ⇨ 59.18

Reciprocal discipline will not be imposed unless an evidentiary hearing is held or waived in the foreign jurisdiction; however, once such an evidentiary hearing comporting with due process is held, there need not be another such hearing in the District of Columbia, and the attorney is entitled only to the opportunity to be heard at a non-evidentiary hearing in the District of Columbia regarding attorney's objections to reciprocal disci-

pline. In re Balsamo, 2001, 780 A.2d 255. Attorney And Client ⇨ 54

Attorney's 30-day suspension by United States Court of Appeals for the District of Columbia Circuit, for failing to provide competent representation and violating disciplinary rules prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation and conduct interfering with the administration of justice, was not substantially different discipline from what would have been imposed in an original disciplinary proceeding in District of Columbia, and thus, 30-day suspension was warranted as reciprocal discipline; attorney's conduct in making misrepresentations to the federal appellate court regarding his reasons for failing to meet that court's deadlines "at least approach[ed] dishonesty." In re Balsamo, 2001, 780 A.2d 255. Attorney And Client ⇨ 59.18

Reciprocal discipline of attorney in form of public censure was warranted based on an functionally equivalent discipline of public reprimand issued in Florida, where attorney had admitted to failing to provide competent representation, failing to act with reasonable diligence and promptness in representing a client, engaging in conduct prejudicial to the administration of justice, and attempting to improperly limit his malpractice liability to a client. In re Kirkiles, 2001, 779 A.2d 357. Attorney And Client ⇨ 59.18

The resignation of an attorney in the face of disciplinary charges constitutes "discipline" within the meaning of the Bar Rules, and the Court of Appeals will impose identical discipline in such circumstances unless it finds, on the face of the record, clear and convincing evidence that one of five enumerated exceptions applies. In re Schoeneman, 2001, 777 A.2d 259. Attorney And Client ⇨ 59.18

Reciprocal attorney discipline based on attorney's resignation in another jurisdiction in which client had filed complaint with disciplinary authorities could be based only on complaint presented to attorney in course of investigation in that jurisdiction, and not on informal summary of charges sent as courtesy by Bar Counsel in that jurisdiction, as attorney asserted without contradiction that he had not seen that informal summary when he resigned. In re Schoeneman, 2001, 777 A.2d 259. Attorney And Client ⇨ 59.18

When reciprocal discipline is based on an attorney's consent to discipline in another jurisdiction, that attorney must have been apprised of the nature of the charges against him to have been afforded due process. In re Schoeneman, 2001, 777 A.2d 259. Constitutional Law ⇨ 4273(3)

Reciprocal discipline based on an attorney's resignation must be based only on those allegations of which the attorney had fair notice at the time of resignation. In re Schoeneman, 2001, 777 A.2d 259. Attorney And Client ⇨ 59.18

Permanent disbarment in another jurisdiction warranted reciprocal discipline of disbarment in District of Columbia. In re Meisler, 2001, 776 A.2d 1207. Attorney And Client ⇨ 59.18

In reciprocal attorney discipline cases, the presumption is that the discipline in the District of Columbia will be the same as it was in the original disciplining jurisdiction. In *re Meisler*, 2001, 776 A.2d 1207. Attorney And Client ⇨ 53(1)

Reciprocal disbarment imposed upon attorney who was suspended following his resignation from bar in other jurisdiction would be deemed to run from date that attorney filed affidavit stating, *inter alia*, that he had informed clients and adversaries of that suspension. In *re Meisler*, 2001, 776 A.2d 1207. Attorney And Client ⇨ 60

In reciprocal disciplinary case, attorney who had been suspended in Massachusetts for three months, with the condition that he would not be permitted to apply for reinstatement until he had purged himself of contempt imposed by Vermont court in divorce action, would be suspended in District of Columbia for three months, with reinstatement conditioned upon proof of fitness to practice. In *re Kersey*, 2001, 775 A.2d 1106. Attorney And Client ⇨ 59.18

A fixed period of suspension is appropriate reciprocal discipline when the original disciplining court has imposed an indefinite suspension. In *re Freed*, 2001, 773 A.2d 436. Attorney And Client ⇨ 59.18

13.5. Negotiated attorney discipline

Court of Appeals would approve petition for negotiated attorney discipline, under which attorney agreed to 30-day suspension and that his conduct, in accepting \$55,000 in funds from a foreign nation's government and subsequently using that money for the benefit of the nation's former ambassador after government had changed and ambassador had turned in his diplomatic credentials, violated rule requiring him to safeguard and hold in trust funds which he held at a time that a dispute arose among persons claiming an interest in them. In *re Johnson*, 2009, 984 A.2d 176. Attorney And Client ⇨ 59.13(4)

14. Board of Professional Responsibility

In reciprocal attorney discipline case, bar counsel and the Board on Professional Responsibility may rely upon the "substantially different discipline" exception when arguing for or recommending a greater sanction. In *re Ditton*, 2008, 954 A.2d 986, opinion after remand 980 A.2d 1170. Attorney And Client ⇨ 59.18

Where no exception has been taken to Board on Professional Responsibility's report and recommendation in attorney disciplinary proceeding, Court of Appeals gives heightened deference to Board's recommendation. In *re Steinberg*, 2008, 953 A.2d 306. Attorney And Client ⇨ 57

Board on Professional Responsibility had personal jurisdiction over attorney in attorney discipline case, under rule providing that all bar members were subject to the disciplinary jurisdiction of the Court of Appeals and its Board, even if attorney had not been personally served with specification of charges and petition instituting formal disciplinary proceedings, where attorney had actual

notice of the charges against him; it was the rule, rather than service, that provided for jurisdiction of the Board and its hearing committee over a licensed attorney. In *re Mitrano*, 2008, 952 A.2d 901, certiorari denied 129 S.Ct. 2064, 173 L.Ed.2d 1134. Attorney And Client ⇨ 47.1

In an attorney discipline case, the Court of Appeals must accept subsidiary findings of fact by the hearing committee that are supported by substantial evidence in the record viewed as a whole. In *re Mitrano*, 2008, 952 A.2d 901, certiorari denied 129 S.Ct. 2064, 173 L.Ed.2d 1134. Attorney And Client ⇨ 57

In an attorney discipline proceeding, the Court of Appeals will impose the sanction recommended by the Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In *re Mayers*, 2008, 943 A.2d 1170. Attorney And Client ⇨ 59.5(1); Attorney And Client ⇨ 59.5(3)

When no exception has been taken by either the attorney or Bar Counsel to the Board on Professional Responsibility's report and recommendation in a reciprocal discipline case, the Court of Appeals gives heightened deference to the Board's recommendation. In *re Roth*, 2006, 905 A.2d 176. Attorney And Client ⇨ 57

Generally, if the sanction recommended by the Board on Professional Responsibility falls within a wide range of acceptable outcomes, it will be adopted and imposed. In *re Park*, 2006, 894 A.2d 411. Attorney And Client ⇨ 57

Recommendation of Board on Professional Responsibility that attorney receive identical and reciprocal sanction of disbarment was entitled to heightened deference from Court of Appeals, where subject attorney took no exception to Board's report and recommendation. In *re Gruber*, 2005, 889 A.2d 991. Attorney And Client ⇨ 57

Court of Appeals' deference to report and recommendation of Board on Professional Responsibility in attorney disciplinary proceeding was heightened, where neither bar counsel nor subject attorney opposed report and recommendation. In *re Soininen*, 2005, 889 A.2d 294. Attorney And Client ⇨ 57

Where no exceptions have been filed, the Court of Appeals gives great deference to the recommendation by the Board on Professional Responsibility. In *re Gizzarelli*, 2005, 888 A.2d 1154. Attorney And Client ⇨ 57

Decision on sanction in an attorney disciplinary matter is committed, in the final analysis, to the discretion of the Court of Appeals. In *re Cater*, 2005, 887 A.2d 1. Attorney And Client ⇨ 57

Determination of appropriate standard for imposing fitness requirement for reinstatement in attorney disciplinary proceedings involving suspension was legal question for resolution by Court of Appeals. In *re Cater*, 2005, 887 A.2d 1. Attorney And Client ⇨ 57

Court of Appeals gives heightened deference to the recommendation of the Board on Professional Responsibility in attorney disciplinary cases in which no exception has been taken. In *re Smith*, 2005, 886 A.2d 75. Attorney And Client ⇨ 57

Court of Appeals will accept the findings of the Board on Professional Responsibility in an attorney disciplinary proceeding as long as they are supported by substantial evidence in the record. In *re Mendoza*, 2005, 885 A.2d 317. Attorney And Client ⇨ 57

Court of Appeals would give heightened deference to report and recommendation of Board on Professional Responsibility in attorney disciplinary case, where subject attorney did not file any exceptions thereto. In *re Mendoza*, 2005, 885 A.2d 317. Attorney And Client ⇨ 57

Where no exception has been taken to Report and Recommendation by Board on Professional Responsibility, the Supreme Court gives heightened deference to the Board's recommendation. In *re Ras*, 2005, 884 A.2d 44. Attorney And Client ⇨ 57

Although recommended sanction of Board on Professional Responsibility is given considerable deference in attorney discipline proceedings, the ultimate choice of sanction is for Court of Appeals to decide. In *re Artis*, 2005, 883 A.2d 85. Attorney And Client ⇨ 57

In attorney discipline proceedings, recommended sanction of Board on Professional Responsibility comes to Court of Appeals with a strong presumption in favor of its imposition. In *re Artis*, 2005, 883 A.2d 85. Attorney And Client ⇨ 57

In disciplinary proceedings, Court of Appeals will accept factual findings of Board on Professional Responsibility unless they are not supported by substantial evidence in the record and will adopt its recommended sanction unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In *re Artis*, 2005, 883 A.2d 85. Attorney And Client ⇨ 57

Where neither Bar Counsel nor the attorney has opposed the imposition of identical reciprocal discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline. In *re Hagendorf*, 2005, 881 A.2d 616. Attorney And Client ⇨ 59.18

Since neither Bar Counsel nor attorney had filed any exceptions to the report and recommendation of the Board on Professional Responsibility in reciprocal disciplinary action, appellate court would give great deference to the Board's recommendation, and appellate court's deference was not diminished by the fact that the recommended sanction was substantially different from the sanction imposed by Maryland. In *re Parshall*, 2005, 878 A.2d 1253. Attorney And Client ⇨ 57

Where no exceptions to a report and recommendation filed by the Board on Professional Respon-

sibility are filed, the Court of Appeals gives heightened deference to the Board's recommendation. In *re Steinberg*, 2005, 878 A.2d 496. Attorney And Client ⇨ 57

Comparing one case to another for purposes of determining appropriate discipline in an attorney disciplinary proceeding is an inherently imprecise process, and the expertise of the Board on Professional Responsibility in disciplinary matters is entitled to considerable deference. In *re Thyden*, 2005, 877 A.2d 129. Attorney And Client ⇨ 57

Board on Professional Responsibility has the authority, in reciprocal attorney disciplinary proceedings, to recommend greater discipline than that imposed by original disciplining court, and the Court of Appeals has the authority to impose it. In *re Demos*, 2005, 875 A.2d 636. Attorney And Client ⇨ 59.18

Where attorney did not contest the imposition of indefinite suspension as reciprocal discipline before the Board on Professional Responsibility and did not except to the Board's recommendation of indefinite suspension, the Board's role in deciding whether to recommend identical reciprocal discipline was an exceptionally limited one, and, similarly, the Court of Appeals' consideration of the Board's recommendation was especially deferential. In *re Aldridge*, 2005, 873 A.2d 335. Attorney And Client ⇨ 57; Attorney And Client ⇨ 59.18

A recommendation of the Board on Professional Responsibility in an attorney disciplinary proceeding with respect to a proposed sanction comes to the Court of Appeals with a strong presumption in favor of its imposition. In *re Anya*, 2005, 871 A.2d 1181. Attorney And Client ⇨ 57

Court of Appeals respects the Board on Professional Responsibility's recommendation in attorney disciplinary case unless the recommendation is patently unreasonable or is materially inconsistent with the sanctions that Court has imposed in comparable cases, and in the final analysis, the choice of appropriate sanction is the responsibility and duty of Court. In *re Edwards*, 2005, 870 A.2d 90. Attorney And Client ⇨ 57

Court of Appeals imposes the sanction recommended by the Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In *re Shepherd*, 2005, 870 A.2d 67. Attorney And Client ⇨ 59.5(3)

In attorney disciplinary action, stipulation of facts upon which the hearing committee and the Board on Professional Responsibility relied were not void because of the three-year delay in the issuance of the Board's report and recommendation; there was no evidence in the record that attorney's stipulation was conditioned on a speedy disposition by the hearing committee, attorney did not contend that the stipulated facts were untrue, and there was no basis for concluding that attorney was prejudiced by the committee's inaction. In *re Shepherd*, 2005, 870 A.2d 67. Attorney And Client ⇨ 53(1)

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Board on Professional Responsibility's recommendation of a proposed sanction against attorney comes to Court of Appeals with a heavy presumption in its favor, and this presumption becomes even stronger and Court's review more deferential when no exceptions have been filed. In re Devaney, 2005, 870 A.2d 53. Attorney And Client ⇨ 57

Board on Professional Responsibility's recommendation of a proposed sanction against attorney will be adopted by Court of Appeals unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Devaney, 2005, 870 A.2d 53. Attorney And Client ⇨ 57

In deciding whether to adopt the attorney disciplinary sanctions recommendation by the Board of Professional Responsibility, the Court of Appeals must examine the nature of the violation, aggravating and mitigating circumstances, the absence or presence of prior disciplinary sanctions, the moral fitness of the attorney, and the need to protect the legal profession, the courts, and the public. In re Steele, 2005, 868 A.2d 146. Attorney And Client ⇨ 59.5(1)

So long as the attorney disciplinary sanction recommendation of the Board of Professional Responsibility falls within the wide range of acceptable outcomes, it comes to the Court of Appeals with a strong presumption in favor of its imposition. In re Steele, 2005, 868 A.2d 146. Attorney And Client ⇨ 57

The system of attorney discipline, including the imposition of sanctions, is the responsibility and duty of the Court of Appeals. In re Steele, 2005, 868 A.2d 146. Attorney And Client ⇨ 36(1)

Report and disciplinary recommendation of Board of Professional Responsibility were entitled to heightened deference from Court of Appeals, where no exception was taken thereto. In re Winick, 2005, 866 A.2d 51. Attorney And Client ⇨ 57

In attorney discipline cases, Court of Appeals will impose the sanction recommended by the Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Scanlon, 2005, 865 A.2d 534. Attorney And Client ⇨ 57

While the Court of Appeals is required to accord substantial deference to the recommendation of the Board on Professional Responsibility, in the final analysis, the responsibility to discipline lawyers is the Court's. In re Steinberg, 2004, 864 A.2d 120. Attorney And Client ⇨ 57

Generally speaking, if the Board on Professional Responsibility's recommended sanction in an attorney discipline case falls within the wide range of acceptable outcomes, it will be adopted and imposed. In re Austin, 2004, 858 A.2d 969. Attorney And Client ⇨ 57

A sanction recommended by the Board on Professional Responsibility in an attorney discipline case comes to the Court of Appeals with a strong

presumption in favor of its imposition. In re Austin, 2004, 858 A.2d 969. Attorney And Client ⇨ 57

Board on Professional Responsibility was under no obligation to accept unsworn affidavits proffered by attorney who was subject of disciplinary proceeding, where affidavits were proffered long after the record had closed. In re Rivlin, 2004, 856 A.2d 1086. Attorney And Client ⇨ 53(1)

Court of Appeals' deference to the Board on Professional Responsibility in reciprocal attorney discipline cases is not diminished by the fact that the sanction recommended by the Board is substantially different from the sanction imposed by the other jurisdiction. In re McClain, 2004, 856 A.2d 589. Attorney And Client ⇨ 57

The Board on Professional Responsibility's recommended sanction, in an attorney disciplinary case, comes to the Court of Appeals with a strong presumption in favor of its imposition. In re Soininen, 2004, 853 A.2d 712. Attorney And Client ⇨ 57

Generally speaking, in an attorney disciplinary proceeding, if the Board on Professional Responsibility's recommended sanction falls within a wide range of acceptable outcomes, it will be adopted by the Court of Appeals and imposed. In re Soininen, 2004, 853 A.2d 712. Attorney And Client ⇨ 57

Although the Court of Appeals must give considerable deference to the Board on Professional Responsibility's recommendations in attorney disciplinary matters, the responsibility for imposing sanctions rests with the Court of Appeals in the first instance. In re Soininen, 2004, 853 A.2d 712. Attorney And Client ⇨ 57

Court of Appeals's deference to Board on Professional Responsibility's recommendation regarding attorney discipline was heightened, where neither Bar Counsel nor attorney opposed the Board's report and recommendation. In re Abrahamson, 2004, 852 A.2d 949. Attorney And Client ⇨ 57

Recommendation by Board of Professional Responsibility on petition for reinstatement is entitled to great weight, and Supreme Court's review is even more deferential where no party has filed an exception. In re Matzkin, 2004, 850 A.2d 310. Attorney And Client ⇨ 61

Unchallenged findings of Board of Professional Responsibility, that former attorney failed to present any evidence that he recognized his wrongdoing that had resulted in disbarment or had demonstrated ability to handle ethical rigors of practicing law, warranted adoption of Board's recommendation that petition for reinstatement to bar be denied. In re Matzkin, 2004, 850 A.2d 310. Attorney And Client ⇨ 61

Before an attorney is reinstated from a disciplinary suspension, the Court of Appeals must be independently satisfied that the criteria for reinstatement have been met; nevertheless, the Board on Professional Responsibility's (BPR) findings and recommendations are entitled to great weight.

In re Brown, 2004, 845 A.2d 519. Attorney And Client ⇨ 61

The Court of Appeals gives less deference to recommendations of the Board on Professional Responsibility in reciprocal attorney discipline cases than in original proceedings, in light of the specific constraints in the Bar Rule governing reciprocal discipline. In re Laibstain, 2004, 841 A.2d 1259. Attorney And Client ⇨ 57

Attorney's failure to respond to requests for information from bar counsel and board on professional responsibility in connection with three separate investigations warranted 120-day suspension from practice of law. In re Beller, 2004, 841 A.2d 768. Attorney And Client ⇨ 59.13(3)

Generally speaking, if the Board of Professional Responsibility's recommended sanction falls within a wide range of acceptable outcomes, it will be adopted by the Court of Appeals and imposed. In re Schlemmer, 2004, 840 A.2d 657. Attorney And Client ⇨ 57

In the absence of any objection by attorney, the Court of Appeals' deferential review of the Board of Professional Responsibility's recommendation of reciprocal discipline is even more deferential. In re Zackey, 2003, 838 A.2d 313. Attorney And Client ⇨ 57

Attorney's failure to file any exception to Board of Professional Responsibility's report and recommendation was a concession that reciprocal disbarment was warranted. In re Ain, 2003, 837 A.2d 908. Attorney And Client ⇨ 57

In attorney disciplinary proceedings, the Court of Appeals will accept the Board on Professional Responsibility's findings as long as they are supported by substantial evidence in the record. In re Powell, 2003, 836 A.2d 579. Attorney And Client ⇨ 57

Attorney's failure to file any exception to the Board of Professional Responsibility's report and recommendation was a concession that reciprocal disbarment was warranted. In re Dunietz, 2003, 832 A.2d 161. Attorney And Client ⇨ 59.18

While the Board on Professional Responsibility's report on the imposition of reciprocal discipline comes to Court of Appeals in the form of a recommendation and while Court has ultimate responsibility for sanctioning members of the Bar, the Board's recommendation comes to Court with a strong presumption in favor of its correctness, and attorney bears a heavy burden to successfully establish claimed exceptions to reciprocal discipline. In re Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 57; Attorney And Client ⇨ 59.18

Assessing the credibility of witnesses is a matter left to the factfinder, which in attorney disciplinary proceedings is the hearing committee of the Board on Professional Responsibility. In re Hallmark, 2003, 831 A.2d 366. Attorney And Client ⇨ 57

Any belief on part of bar admissions committee that attorney had not violated court rule prohibiting unauthorized practice of law did not deprive Board on Professional Responsibility of jurisdiction to consider allegation that attorney's pre-admission

practice of law had violated such rule. In re Starnes, 2003, 829 A.2d 488. Attorney And Client ⇨ 53(1)

Court of Appeals gives great deference to recommended sanctions by the Board of Professional Responsibility and generally endorses the Board's recommendation if it falls within an acceptable range. In re Romansky, 2003, 825 A.2d 311. Attorney And Client ⇨ 57

The actual imposition of discipline against attorneys is the task of the Court of Appeals alone, not the Board on Professional Responsibility; in the final analysis, the responsibility to discipline lawyers is the court's. In re Edwards, 2002, 808 A.2d 476. Attorney And Client ⇨ 57

In determining whether to accept the board of professional responsibility's disbarment recommendation, appellate court considers the nature of the violation, prior disciplinary sanctions, mitigating and aggravating circumstances, protection of the public, courts and the legal profession, and, to the extent it can be determined, the moral fitness of the attorney. In re Corizzi, 2002, 803 A.2d 438. Attorney And Client ⇨ 57

In reciprocal disciplinary cases, the level of deference accorded the Board on Professional Responsibility recommendations is less than in original proceedings, given that the Bar Rules create a rebuttable presumption that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction, unless the record affirmatively shows that a different sanction is warranted. In re Sheridan, 2002, 798 A.2d 516. Attorney And Client ⇨ 57

When deference is owed in the area of sanctions, that deference is owed to the Board on Professional Responsibility, not to Bar Counsel. In re Kitchings, 2001, 779 A.2d 926, opinion after remand 857 A.2d 1059. Attorney And Client ⇨ 57

The Board on Professional Responsibility reviews the hearing committee's findings and conclusions to determine if the findings of fact are supported by substantial evidence of record, unless they are determinations of "ultimate facts," which are actually conclusions of law. In re Travers, 2000, 764 A.2d 242. Attorney And Client ⇨ 57

14.3. Reinstatement

Fitness requirement would be imposed on attorney, before attorney could be reinstated following her suspension, because her failure to participate in the disciplinary inquiry raised serious doubt over whether she would act ethically and competently in the future; attorney never responded substantively to Bar Counsel's underlying complaint, though attorney provided Bar Counsel her mother's address attorney either ignored the mail sent to that address or failed to ensure it reached her in a timely manner, attorney repeatedly failed to respond to Bar Counsel's complaint despite Bar Counsel's mailing at least five letters, ordering attorney to respond, unsuccessfully employing a process server, and eventually resorting to service by publication, and ample evidence supported findings by hearing committee that attorney had delib-

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erately evaded service and that her telephone testimony at the hearing was not credible. In re Lea, 2009, 969 A.2d 881. Attorney And Client ⇨ 59.13(7)

If the original disciplining jurisdiction has summarily reinstated an attorney and the Office of Bar Counsel in the District of Columbia agrees that the attorney has satisfied the criteria for reinstatement in the District of Columbia, the Court of Appeals will entertain a motion to vacate any requirement that the attorney furnish proof of fitness as a condition of reinstatement or, equivalently, a motion for expedited reinstatement without the need for a hearing and other proceedings. In re Gonzalez, 2009, 967 A.2d 658. Attorney And Client ⇨ 61

Disbarred attorney met his burden of proving his fitness to practice law, such that he was entitled to reinstatement to the practice of law, with condition of reporting to ensure compliance with his restitution obligation, as he had made significant efforts over previous several years to reach an offer in compromise (OIC) with the Internal Revenue Service (IRS), and IRS accepted the OIC. In re Courtois, 2007, 931 A.2d 1015. Attorney And Client ⇨ 61

Attorney's reinstatement following suspension for failure to cooperate in disciplinary investigations would be conditioned upon her full compliance with Bar Counsel's requests for information regarding the underlying disciplinary complaints. In re Cater, 2005, 887 A.2d 1. Attorney And Client ⇨ 59.13(7)

Attorney's reinstatement following suspension for failure to make reasonable efforts to ensure that conduct of non-attorney employee was compatible with her own professional obligations, facilitating employee's embezzlement of client funds, would be conditioned upon proof of reimbursement to client estates, but not upon restitution to attorney's own sureties, where attorney's contracts with her sureties were not part of record in disciplinary proceedings and sureties did not require assistance of Court of Appeals in enforcing their legal rights. In re Cater, 2005, 887 A.2d 1. Attorney And Client ⇨ 59.13(7)

Proof of a violation of the rules of professional conduct meriting even a substantial period of suspension is not necessarily sufficient to justify conditioning reinstatement on proof of rehabilitation. In re Cater, 2005, 887 A.2d 1. Attorney And Client ⇨ 59.13(7)

To justify conditioning the reinstatement of a suspended attorney on proof of rehabilitation, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law. In re Cater, 2005, 887 A.2d 1. Attorney And Client ⇨ 59.13(7)

In determining whether imposition of a fitness requirement as a condition for reinstatement is justified in an attorney disciplinary proceeding, the burden of proof belongs to the proponent of the

sanction, that is, Bar Counsel. In re Cater, 2005, 887 A.2d 1. Attorney And Client ⇨ 59.13(7)

"Clear and convincing evidence" standard was appropriate for Bar Counsel's burden of proof in attorney disciplinary proceedings involving request for imposition of fitness requirement as a condition for reinstatement following suspension; imposition of fitness requirement depended on specific finding beyond proof of underlying violation of rules of professional conduct, and fitness requirement amounted to effective enhancement of sanction, in that it had potential to delay reinstatement for months or years beyond expiration of suspension. In re Cater, 2005, 887 A.2d 1. Attorney And Client ⇨ 59.13(7)

Attorney's reinstatement following suspension for failure to make reasonable efforts to ensure that conduct of non-attorney employee was compatible with her own professional obligations and failure to cooperate in disciplinary investigations would be conditioned upon proof of fitness, where evidence in disciplinary proceedings cast serious doubt upon attorney's continuing fitness to practice law; attorney failed timely to discover sizeable embezzlements by her secretary, engaged in pattern of lack of cooperation in multiple proceedings over 18-month period, not all of which was attributable to personal hardship, and failed to attend hearing rescheduled to enable her participation in proceedings. In re Cater, 2005, 887 A.2d 1. Attorney And Client ⇨ 59.13(7)

Suspension for 30 days, with reinstatement conditioned on showing of fitness to practice, was appropriate disciplinary sanction for attorney's failure to cooperate in disciplinary proceedings, where in prior disciplinary proceeding which had involved misconduct very similar to the current misconduct, Court of Appeals had declined to require showing of fitness as condition to reinstatement but had issued a warning that attorneys must know that if they choose to willfully ignore and frustrate the efforts of Bar Counsel and Board on Professional Responsibility to obtain responses to charges of serious ethical misconduct, the consequences will be severe. In re Steinberg, 2004, 864 A.2d 120. Attorney And Client ⇨ 59.13(3)

Court of Appeals, when rejecting attorney's fifth petition for reinstatement following his suspension, would not order that any future petition for reinstatement filed by attorney would be invalid on its face if it did not proffer certain specified evidence demonstrating his fitness to resume practicing law; such a precondition was not necessary for the Board on Professional Responsibility to have the ability to protect the disciplinary system from a frivolous or insufficient petition for reinstatement. In re Stanton, 2004, 860 A.2d 369, certiorari denied 125 S.Ct. 2528, 544 U.S. 1061, 161 L.Ed.2d 1111. Attorney And Client ⇨ 61

Court of Appeals would not grant attorney's fifth petition for reinstatement following his suspension, where the attorney did not address each of the *Roundtree* factors for demonstrating his fitness to resume practicing law, and instead he advocated abolishing the Board on Professional Responsibility

ty and replacing it with a “full-time professional disciplinary fact-finding agency with members sworn to uphold the Constitution of the United States and paid from appropriations like civil officers of administrative agencies of the government.” In *re Stanton*, 2004, 860 A.2d 369, certiorari denied 125 S.Ct. 2528, 544 U.S. 1061, 161 L.Ed.2d 1111. Attorney And Client ⇨ 61

Evidence supported the Board of Professional Responsibility’s finding that attorney’s petition for reinstatement was insufficient as a matter of law; attorney failed to address the two material facts concerning attorney’s recognition of the seriousness of his misconduct and attorney’s conduct during his period of disbarment when attorney failed to acknowledge that his former law firm paid millions of dollars to recompense attorney’s victims, that former law firm was itself a victim of attorney’s misconduct, or that attorney was responsible to provide restitution to former law firm. In *re Morrell*, 2004, 859 A.2d 644. Attorney And Client ⇨ 61

Record supported conclusion of Board on Professional Responsibility that attorney had done little to rectify the circumstances which led to his disbarment, as required for reinstatement, considering that, in the years since disbarment, attorney’s bank accounts were overdrawn frequently, he had outstanding judgments against him, and the misconduct for which attorney was disbarred was prompted by his precarious financial situation. In *re Patkus*, 2004, 841 A.2d 1268. Attorney And Client ⇨ 61

Attorney’s petition for reinstatement as member of bar, following disbarment for intentional misappropriation of funds of a minor child for whom he was serving as guardian, would be denied, considering that the misconduct was serious, attorney had done little to rectify circumstances which led to his disbarment, and attorney was evasive on reinstatement questionnaire and failed to take any continuing legal education (CLE) courses since year of his disbarment. In *re Patkus*, 2004, 841 A.2d 1268. Attorney And Client ⇨ 61

Five factors to be considered in an attorney reinstatement case include: (1) nature and circumstances of misconduct for which attorney was disciplined; (2) whether attorney recognizes seriousness of misconduct; (3) attorney’s conduct since discipline was imposed, including steps taken to remedy past wrongs and prevent future ones; (4) attorney’s present character; and (5) attorney’s present qualifications and competence to practice law. In *re Patkus*, 2004, 841 A.2d 1268. Attorney And Client ⇨ 61

While the Board on Professional Responsibility’s recommendation is entitled to great weight, the ultimate decision of whether an attorney should be reinstated rests with the Court of Appeals. In *re Patkus*, 2004, 841 A.2d 1268. Attorney And Client ⇨ 61

Review of the Board on Professional Responsibility’s recommendation concerning reinstatement as member of the bar is especially deferential

where neither the attorney petitioner nor Bar Counsel filed objections or exceptions to Board’s report in Court of Appeals. In *re Patkus*, 2004, 841 A.2d 1268. Attorney And Client ⇨ 61

14.5. Practice and procedure

Witness was qualified to testify as an expert on the legal standard of care in client’s legal malpractice action against law firm after the firm’s failure to respond to a deadline resulted in the dismissal of client’s employment discrimination case; witness had been a licensed attorney in the District of Columbia for twenty years and had operated his own law firm for over fifteen years, and witness estimated that he had worked on hundreds of employment discrimination cases. *Martin v. Ross*, 2010, 6 A.3d 860. Evidence ⇨ 538

Specification of charges against attorney in attorney discipline proceeding gave attorney sufficient notice that he was being charged with theft and misappropriation of a client check, even if the specification alleged that forgery had been the method attorney used to accomplish the misappropriation. In *re Mitrano*, 2008, 952 A.2d 901, certiorari denied 129 S.Ct. 2064, 173 L.Ed.2d 1134. Attorney And Client ⇨ 52

Five-year delay in attorney disciplinary proceeding, which was largely attributable to hearing committee’s taking more than three years to issue its report, did not warrant mitigation of disciplinary sanction by staying the execution of attorney’s suspension during period of unsupervised probation; stay would effectively result in no suspension at all, and attorney did not assert that the delay prejudiced him. In *re Ponds*, 2005, 888 A.2d 234. Attorney And Client ⇨ 59.5(5); Attorney And Client ⇨ 59.17(1)

Single affidavit from process server, stating that individuals, including a family member of attorney, present at various addresses at which service of notice of attorney investigative inquiry was attempted had not been forthcoming as to attorney’s whereabouts did not constitute clear and convincing evidence that attorney had deliberately evaded knowledge of the inquiry. In *re Owusu*, 2005, 886 A.2d 536. Attorney And Client ⇨ 53(2)

Attorney in attorney discipline proceedings had Fifth Amendment right to refuse to answer Bar Counsel’s interrogatories to explain actions that Auditor–Master had described as “a fraudulent conveyance,” given that fraudulent conduct could give rise to criminal liability. In *re Artis*, 2005, 883 A.2d 85. Witnesses ⇨ 297(13.1)

Bar Counsel’s interrogatories in attorney discipline proceedings, requesting attorney “to explain in detail” his conduct in light of disciplinary rules, were overly broad, vague, burdensome and improperly called for legal conclusions; inquiries requested information that could be readily obtained from documents covered in Bar Counsel’s subpoena duces tecum, and attorney had already interposed a general denial of misconduct. In *re Artis*, 2005, 883 A.2d 85. Attorney And Client ⇨ 48

Discovery by means of Bar Counsel’s written inquiries of attorney in attorney discipline proceeding

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Note 14.5

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ings are subject to the limitation of reasonableness under the circumstances. In *re Artis*, 2005, 883 A.2d 85. Attorney And Client ⇨ 48

Interrogatories, as provided for under civil court rules, should not be incorporated into attorney disciplinary process without promulgation of rules governing their use. In *re Artis*, 2005, 883 A.2d 85. Attorney And Client ⇨ 48

Any error in procedures followed by hearing committee in hearing mitigating evidence in attorney disciplinary proceeding did not provide legitimate ground for dismissal of complaint, where attorney failed to raise claim with respect thereto before Board on Professional Responsibility and failed to demonstrate prejudice resulting therefrom. In *re Thyden*, 2005, 877 A.2d 129. Attorney And Client ⇨ 57

Replacement of committee member in attorney disciplinary proceedings, immediately before commencement of hearing, did not implicate due process concerns and did not provide legitimate ground for dismissal of complaint, despite attorney's contention that he was unable to make reasonable inquiry about or challenge new member, where attorney did not object to new committee member's participation when it was announced or at any time during hearing, did not raise issue before Board on Professional Responsibility, led committee chair to believe that he did not object to new committee member, and did not contend before Court of Appeals that he was, in fact, prejudiced by replacement of committee member. In *re Thyden*, 2005, 877 A.2d 129. Attorney And Client ⇨ 57

Where an attorney's ability to present a defense in attorney disciplinary proceedings has not been impaired by delay in such proceedings, and in the absence of other specific prejudice, the serious nature of the violations requires that the public interest in regulating members of the bar take precedence over the attorney's preference, no matter how understandable, to be relieved of the burden of anxiety and uncertainty inherent in every disciplinary proceeding. In *re Thyden*, 2005, 877 A.2d 129. Attorney And Client ⇨ 47.1

Any excessive delay in conclusion of attorney disciplinary proceedings did not provide legitimate ground for dismissal of complaint, where attorney failed to argue any prejudice until proceedings in Court of Appeals on Board on Professional Responsibility's report and recommendation, witness alleged by attorney to have been rendered unable to testify by reason of delay did not testify in proceedings before Board and parties agreed that witness did not need to appear, witness' testimony would have related primarily to charge of which attorney was exonerated, and attorney was free to practice law during pendency of proceedings. In *re Thyden*, 2005, 877 A.2d 129. Attorney And Client ⇨ 57

Notwithstanding that bar discipline does not result in criminal conviction, an attorney who is the subject of such proceedings is entitled to procedural due process safeguards; the procedural require-

ments which apply in attorney disciplinary proceedings are analogous to those of other contested cases. In *re Thyden*, 2005, 877 A.2d 129. Attorney And Client ⇨ 47.1; Constitutional Law ⇨ 4273(3)

Attorney did not establish that hearing committee's three year delay in issuing a decision in disciplinary action created sufficient bias to warrant a finding of a constitutional due process violation; there was nothing in the record upon which any reasonable person could conclude that the members of the committee were biased against attorney or were trying to cover up for any misconduct on their part by ruling against attorney. In *re Shepherd*, 2005, 870 A.2d 67. Attorney And Client ⇨ 54; Constitutional Law ⇨ 4273(3)

Attorney did not establish that hearing committee's three-year delay in issuing its report in disciplinary action created bias on the part of the committee to rule against attorney so as to deflect attention away from its own alleged neglect; there was nothing in the record upon which any reasonable person could conclude that the members of the committee were biased against attorney or were trying to cover up for any misconduct on their part by ruling against attorney. In *re Shepherd*, 2005, 870 A.2d 67. Attorney And Client ⇨ 54

Attorney disciplinary proceedings were properly had before ad hoc hearing committee, where convening of such committee was required to ensure that disciplinary process operated without undue delay. In *re Douglass*, 2004, 859 A.2d 1069. Attorney And Client ⇨ 54

Hearing committee did not abuse its discretion in denying attorney's motion to take deposition of former client, in attorney disciplinary proceedings, where attorney did not establish compelling need for such discovery within meaning of applicable rule. In *re Douglass*, 2004, 859 A.2d 1069. Attorney And Client ⇨ 48

Delay in concluding attorney disciplinary proceeding did not prejudice attorney materially or justify reduction of his sanction beyond consideration that recommendation of Board on Professional Responsibility already evidenced. In *re Starnes*, 2003, 829 A.2d 488. Attorney And Client ⇨ 54; Attorney And Client ⇨ 59.5(5)

Attorney was deemed to have notice of reciprocal disbarment proceedings, where attorney acknowledged that he received complaint and was aware of proceedings against him in Maryland, attorney failed to report his disbarment to Bar Counsel in the District of Columbia, and failed to update his address with District of Columbia's bar. In *re McGowan*, 2003, 827 A.2d 31. Attorney And Client ⇨ 59.18

Attorney's failure to respond to notices of reciprocal disciplinary proceedings would be treated as failure to respond after having had notice, where proceedings were based upon attorney's receipt of public censure in another jurisdiction, of which he failed to inform Board on Professional Responsibility, and where notices were returned due to attor-

ney's failure to update his address on file with the bar. In re Smith, 2002, 812 A.2d 931. Attorney And Client ⇨ 48

Attorney received sufficient notice in disciplinary proceeding that hearing committee would consider, as an ethical violation, his failure to disclose to clients in potential class action against shampoo manufacturer that they had a continuing right to sue under settlement agreement that attorney and co-counsel reached with manufacturer; while amended specification of charges did not specifically mention the continuing right to sue, it sufficiently alerted attorney that entire settlement agreement would be subject to scrutiny for ethical violations. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 52

Consolidation of attorney's disciplinary case with that of managing partner of her firm did not violate attorney's right to due process, where cases arose out of attorney's and partner's representation of their condominium clients, there was no indication that attorney would be prejudiced by the joinder, partner never appeared at the hearing, and Board on Professional Responsibility modified hearing committee's factual findings, as necessary, to distinguish attorney's behavior from that of the partner's. In re Carlson, 2002, 802 A.2d 341. Attorney And Client ⇨ 47.1; Constitutional Law ⇨ 4273(3)

An attorney has a right to procedural due process in a disciplinary procedure; due process is afforded when the disciplinary proceeding provides adequate notice of the charges of misconduct and a meaningful opportunity to be heard. In re Maxwell, 2002, 798 A.2d 525. Constitutional Law ⇨ 4273(3)

Alleged misapprehension by federal appellate court's grievance committee, that federal district court judge had sanctioned attorney, in case involving same parties and issues as case in which attorney's misconduct occurred, for his repeated failure to follow court rules and deadlines rather than for his conduct at deposition, did not warrant evidentiary hearing in District of Columbia reciprocal discipline proceeding; attorney had raised and argued before the federal appellate court the committee's alleged misapprehension. In re Balsamo, 2001, 780 A.2d 255. Attorney And Client ⇨ 54

Bar Counsel's resolution of three-count and subsequent 12-count disciplinary complaints, based on stipulated facts, was not a "dismissal" of the 12-count complaint that was allegedly beyond Bar Counsel's authority; Bar Counsel presented all 15 counts to hearing committee, Board on Professional Responsibility, and Court of Appeals and included them in recommended sanction, memorandum of understanding provided that if any counts were not taken into account in the sanction imposed, then Bar Counsel retained authority to prosecute them separately, and memorandum of understanding made clear that all 15 charges could be raised if attorney were to petition for reinstatement after the recommended six-month suspension. In re

Kitchings, 2001, 779 A.2d 926, opinion after remand 857 A.2d 1059. Attorney And Client ⇨ 47.1

Resolution of three-count and subsequent 12-count disciplinary complaints by Bar Counsel, based on stipulated facts, was not a "plea bargain" that was allegedly beyond Bar Counsel's authority; memorandum of understanding did not state what Bar Counsel was promising in exchange for attorney's stipulation to misconduct in the 12 counts, apart from providing that if the 12 counts were not considered in aggravation of sanction for the first three counts, then Bar Counsel could 'prosecute' them, attorney was given no form of leniency, because Bar Counsel recommended a sanction that it deemed 'appropriate' for all 15 violations, and purpose of memorandum was to allow attorney to avoid cost of litigation, rather than to reduce the disciplinary sanction. In re Kitchings, 2001, 779 A.2d 926, opinion after remand 857 A.2d 1059. Attorney And Client ⇨ 47.1

Although, as the quasi-independent prosecutorial arm of the court, Bar Counsel is not technically an "agency," Bar Counsel, like an agency, is bound to follow its own rules and regulations. In re Kitchings, 2001, 779 A.2d 926, opinion after remand 857 A.2d 1059. Attorney And Client ⇨ 47.1

The Board on Professional Responsibility is obliged to accept the hearing committee's factual findings if those findings are supported by substantial evidence in the record, viewed as a whole. In re Kitchings, 2001, 779 A.2d 926, opinion after remand 857 A.2d 1059. Attorney And Client ⇨ 57

14.7. Presumptions and burden of proof

Under District of Columbia law, bar counsel's dismissal of client's complaint about her attorney did not have preclusive effect in client's subsequent action against attorney for legal malpractice and breach of fiduciary duty; bar counsel had to find clear and convincing evidence of violation of rules of professional conduct in order to sustain disciplinary proceeding, but client only needed to establish her claims by preponderance of evidence. Hickey v. Scott, 2010, 738 F.Supp.2d 55. Attorney And Client ⇨ 53(2); Attorney And Client ⇨ 60; Attorney And Client ⇨ 129(2)

There is a rebuttable presumption that the sanction imposed by the Court of Appeals in a reciprocal discipline case will be identical to that imposed by the original disciplining court; this presumption is rebutted only if the respondent demonstrates, or the face of the record reveals, by clear and convincing evidence the existence an exception to the imposition of reciprocal discipline. In re Beattie, 2008, 956 A.2d 84. Attorney And Client ⇨ 59.18

Bar rule governing reciprocal attorney discipline creates a rebuttable presumption that the discipline will be the same in the District of Columbia as it was in the original jurisdiction. In re Ditton, 2008, 954 A.2d 986, opinion after remand 980 A.2d 1170. Attorney And Client ⇨ 59.18

In an attorney disciplinary proceeding in which reciprocal discipline is recommended, a rebuttable presumption exists that the discipline will be the

same in the District of Columbia as it was in the original disciplining jurisdiction. In re Sawyer, 2008, 953 A.2d 1019. Attorney And Client ⇨ 59.18

Misappropriation of client funds is essentially a per se offense, and proof of improper intent is not required in a disciplinary proceeding. In re Cloud, 2007, 939 A.2d 653, as amended, rehearing granted. Attorney And Client ⇨ 44(2)

Bar Counsel must prove misappropriation by clear and convincing evidence. In re Cloud, 2007, 939 A.2d 653, as amended, rehearing granted. Attorney And Client ⇨ 53(2)

In a reciprocal attorney-discipline proceeding, a rebuttable presumption exists that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In re Richardson, 2007, 935 A.2d 1076. Attorney And Client ⇨ 59.18

A rebuttable presumption exists, with respect to reciprocal discipline of an attorney, that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In re Zdravkovich, 2006, 891 A.2d 258. Attorney And Client ⇨ 59.18

By failing to file any exceptions to the report and recommendation of the Board on Professional Responsibility in reciprocal disciplinary action, attorney effectively conceded that the proposed sanction was appropriate. In re Parshall, 2005, 878 A.2d 1253. Attorney And Client ⇨ 57

Burden of proving attorney disciplinary charges rests with Bar Counsel, and factual findings must be supported by clear and convincing evidence. In re Thyden, 2005, 877 A.2d 129. Attorney And Client ⇨ 53(1); Attorney And Client ⇨ 53(2)

An attorney is presumed to know the ethical rules governing his behavior, and ignorance neither excuses nor mitigates a violation. In re Devaney, 2005, 870 A.2d 53. Attorney And Client ⇨ 46

Disbarred attorney who did not participate in reciprocal discipline proceedings or except to the recommendation of disbarment did not rebut the presumption in favor of identical reciprocal discipline. In re Zackey, 2003, 838 A.2d 313. Attorney And Client ⇨ 53(1)

There is a rebuttable presumption that reciprocal discipline will be the same as in the originating jurisdiction. In re Powers, 2003, 838 A.2d 311. Attorney And Client ⇨ 53(1)

There is a rebuttable presumption that the sanction imposed in a reciprocal discipline case will be identical to that imposed by the original disciplining court; the presumption is rebutted only if the respondent demonstrates, or the face of the record reveals, by clear and convincing evidence the existence of a condition enumerated in Bar Rule for not imposing reciprocal discipline. In re Ain, 2003, 837 A.2d 908. Attorney And Client ⇨ 53(1)

The presumption that the sanction imposed in a reciprocal discipline case will be identical to that imposed by the original disciplining court can be

rebutted only if the attorney demonstrates, or the face of the record reveals, by clear and convincing evidence, that: (1) the procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (2) there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court of Appeals could not, consistently with its duty, accept as final the conclusion on that subject; (3) the imposition of the same discipline would result in grave injustice; (4) the misconduct warrants substantially different discipline in the District of Columbia; or (5) The misconduct elsewhere does not constitute misconduct in the District of Columbia. In re Dunietz, 2003, 832 A.2d 161. Attorney And Client ⇨ 53(2)

Requirement that suspended attorney demonstrate his fitness to practice law before being readmitted was appropriate in view of concerns regarding his honesty, competence, trustworthiness and professional responsibility raised by his unremedied ethical and rule violations. In re Starnes, 2003, 829 A.2d 488. Attorney And Client ⇨ 61

While an intent to defraud or deceive may be required for a finding of fraud, dishonesty may result from conduct evincing a lack of honesty, probity or integrity in principle, for purposes of ethics rule, precluding attorneys from engaging in acts of dishonesty, fraud, deceit or misrepresentation. In re Romansky, 2003, 825 A.2d 311. Attorney And Client ⇨ 37.1

When examining whether an attorney's actions were dishonest, court's take as a given that, for disciplinary purposes, dishonesty does not always depend on a finding of intent to defraud or deceive, for purposes of violation of ethics rule, precluding attorneys from engaging in acts of dishonesty, fraud, deceit or misrepresentation. In re Romansky, 2003, 825 A.2d 311. Attorney And Client ⇨ 37.1

When attorney's allegedly dishonest act itself is not of a kind that is clearly wrongful, or not intentional, Bar Counsel has the additional burden of showing the requisite dishonest intent, for purposes of proving violation of ethics rule, precluding attorneys from engaging in acts of dishonesty, fraud, deceit or misrepresentation. In re Romansky, 2003, 825 A.2d 311. Attorney And Client ⇨ 53(1)

Recommendation and Report of Board on Professional Responsibility in attorney disciplinary proceeding comes to Court of Appeals with strong presumption in favor of its correctness, and attorney bears a heavy burden to successfully establish claimed exceptions. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 57

15. Evidence

Substantial evidence in record of attorney disciplinary proceedings supported findings of Board of Professional Responsibility that attorney misappropriated funds of ward of the state for whom she acted as guardian and failed to cooperate in subse-

quent disciplinary proceedings, in violation of rules of professional conduct prohibiting intentional misappropriation, making false statements to a tribunal, conduct involving dishonesty, fraud, deceit, or misrepresentation, failure to respond to bar counsel's inquiries, and conduct seriously interfering with administration of justice, as well as bar rule requiring response to allegations in bar counsel's complaint. In *re Wilson*, 2008, 953 A.2d 1052. Attorney And Client ⇨ 42; Attorney And Client ⇨ 44(2)

The New Jersey Disciplinary Review Board's (NJDRB) use of facts surrounding attorney's expunged offenses did not violate due process or result in an "infirmity of proof" establishing the disciplinary charges, in reciprocal disciplinary case; attorney had notice and a meaningful opportunity to be heard on the issue, attorney did not prevail on his arguments before the New Jersey courts, the NJDRB relied on the facts underlying the expunged charges, and not just on the charges, as the basis for imposing discipline, and attorney admitted his conduct during the New Jersey disciplinary proceedings. In *re Meaden*, 2006, 902 A.2d 802. Attorney And Client ⇨ 53(1); Constitutional Law ⇨ 4273(3)

Hearing committee's consideration of hearsay documents subsequently excluded by Board on Professional Responsibility in attorney disciplinary proceedings did not implicate due process and did not provide legitimate ground for dismissal of complaint, where hearing committee eschewed reliance on all but one document referred to by attorney, Board did not rely on such documents, and all disciplinary counts not admitted to by attorney were supported by attorney's testimony and record and orders from courts in which misconduct occurred. In *re Thyden*, 2005, 877 A.2d 129. Attorney And Client ⇨ 53(1)

The mere fact that attorney suffered from depression at the time of the misconduct was insufficient to justify either a lesser sanction or an otherwise unwarranted fitness requirement since it had not been shown that attorney's depression either led her to commit the violations for which she was to be disciplined or likely caused her to be impaired at the present time. In *re Edwards*, 2005, 870 A.2d 90. Attorney And Client ⇨ 59.5(5)

Attorney waived her right to present mitigation evidence to the Board on Professional Responsibility by failing to offer it before the hearing committee in disciplinary action. In *re Edwards*, 2005, 870 A.2d 90. Attorney And Client ⇨ 53(1)

In order to qualify for a reduced sanction on account of a disability, such as depression, attorney must demonstrate: (1) by clear and convincing evidence that she had the disability at the time of her misconduct; (2) by a preponderance of the evidence that the disability substantially caused her to engage in that misconduct; and (3) by clear and convincing evidence that she has been substantially rehabilitated. In *re Edwards*, 2005, 870 A.2d 90. Attorney And Client ⇨ 53(2)

In misappropriation cases applying the recklessness standard, Bar Counsel must prove, by clear and convincing evidence, conduct sufficient to support an inference that attorney purposely dealt with and used the funds owed to as his own, or else that he consciously disregarded the risk that those funds would be used for unauthorized purposes. In *re Romansky*, 2003, 825 A.2d 311. Attorney And Client ⇨ 53(2)

Board of Professional Responsibility was required to make findings that attorney acted knowingly or recklessly when he violated clients' fee agreements by adding hours to fee bills in order to premium bill, for purposes of finding that attorney violated ethics rule that precluded attorneys from engaging in acts of dishonesty, fraud, deceit or misrepresentation; Board had to determine whether attorney's explanation for his conduct was true, articulate its findings, and make credibility determinations to support its conclusions. In *re Romansky*, 2003, 825 A.2d 311. Attorney And Client ⇨ 54

Evidence established attorney made false statements of material fact to third party and also engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of two professional conduct rules; when attorney received money judgment in client's personal injury case, attorney told provider of client's pain reduction device, or told his employee to tell provider, that the personal injury suit was on appeal, and attorney initially told provider that payment to provider had been "taken care of a long time ago." In *re Mitchell*, 2003, 822 A.2d 1106. Attorney And Client ⇨ 53(2)

Facts in a civil trial suggesting dishonesty would not suffice as proof in an original attorney discipline matter, and neither will they support by themselves the imposition of increased discipline in a reciprocal proceeding. In *re Maxwell*, 2002, 798 A.2d 525. Attorney And Client ⇨ 53(2)

Bar Counsel must prove disciplinary violations by clear and convincing evidence, which includes burden of proving underlying facts to support showing of an intentional or reckless misappropriation of client funds, which can have such a drastic effect on the penalty to be imposed in contrast to "negligent" misappropriation. In *re Fair*, 2001, 780 A.2d 1106. Attorney And Client ⇨ 53(2)

Record was insufficient to find that conduct of attorney also acting as personal representative in overpaying herself by some \$593.45 of court-approved fees through a series of checks out of estate assets demonstrated a conscious indifference to the consequences, warranting disbarment, rather than mere mistakes, where attorney explained that she assumed that the payments made to herself had totaled \$6100 rather than \$6600, and had kept no record of the payments, but tried to keep the figures in her head. In *re Fair*, 2001, 780 A.2d 1106. Attorney And Client ⇨ 53(2)

Failure of federal appellate court and that court's grievance committee to consider additional, newly discovered evidence of the conflict of inter-

est of federal district court judge who had imposed \$20,000 discovery sanction on attorney in case involving same parties and issues as the case in which attorney's professional misconduct occurred did not deny attorney's due process rights, as basis for refusing to impose reciprocal discipline in District of Columbia; it was unlikely the additional evidence would have added substantially to evidence already introduced, and attorney had not requested stay of federal court disciplinary proceedings so he could develop additional evidence. In *re Balsamo*, 2001, 780 A.2d 255. Attorney And Client ⇨ 53(1); Constitutional Law ⇨ 4273(3)

Attorney's testimony to hearing committee, that he signed stipulation of his own accord, and attorney's reiteration, after a three-month opportunity to reconsider his testimony, that he signed the stipulation voluntarily, established that the stipulation was not the product of duress allegedly imposed by Bar Counsel. In *re Kitchings*, 2001, 779 A.2d 926, opinion after remand 857 A.2d 1059. Attorney And Client ⇨ 53(2)

Evidence supported finding that attorney violated disciplinary rule, requiring him to notify interested party of receipt of funds when he failed to notify client's health insurer, which covered client's medical expenses arising out of a motor vehicle accident in Maryland, of a settlement payment from other motorist's automobile insurer, even if health insurer had no claim to settlement funds under Maryland law; at time of attorney's failure to notify health insurer, Maryland law was unsettled on the issue, and attorney previously signed a form acknowledging that health insurer had a lien on any funds client received and agreeing to disburse such funds to health insurer. In *re Shaw*, 2001, 775 A.2d 1123. Attorney And Client ⇨ 53(2)

The assessment of witness credibility in an attorney disciplinary case is for the factfinder. In *re Asher*, 2001, 772 A.2d 1161. Attorney And Client ⇨ 54

Hearing committee is not precluded, in an attorney disciplinary proceeding, from taking evidence in mitigation and aggravation, including evidence of prior discipline, after completion of the hearing on the merits of the case, even if it has not reached such a determination as to some or all of the charges proffered. In *re Douglass*, 2004, 859 A.2d 1069. Attorney And Client ⇨ 54

Expert testimony concerning conduct of reasonable attorney in personal injury cases was admissible in attorney disciplinary proceedings involving personal injury occurring on cruise ship in international waters, despite attorney's claim that expert was unqualified to testify with respect to statutes of limitations applicable under maritime law, where ad hoc committee handled admissibility issues properly, attorney was afforded and took advantage of opportunity to cross-examine expert on both his qualifications and substance of his testimony, and majority of expert's testimony went to steps required to be taken by reasonable attorney in any personal injury action irrespective of venue.

In *re Douglass*, 2004, 859 A.2d 1069. Attorney And Client ⇨ 53(1)

Hearing committee did not abuse its discretion, in attorney disciplinary proceedings, in admitting evidence after completion of hearing on the merits with respect to prior disciplinary proceedings against attorney, despite its inability to reach preliminary nonbinding determination on all charges proffered by bar counsel, where hearing committee did not take up issue of sanction until after closing of hearing on merits and testimony at issue went directly to issue of sanction, and where disclosure of confidential discipline was appropriate in such setting. In *re Douglass*, 2004, 859 A.2d 1069. Attorney And Client ⇨ 54

16. Review

Court of Appeals afforded heightened deference to report and recommendation of Board on Professional Responsibility in attorney disciplinary proceedings, where no exception was taken to such report and recommendation. In *re Wilson*, 2008, 953 A.2d 1052. Attorney And Client ⇨ 57

The Court of Appeals adheres to the principle that, in reciprocal discipline cases where neither Bar Counsel nor the attorney opposes identical discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline—a situation that the Court anticipates would rarely, if ever, present itself. In *re Turnbo*, 2008, 953 A.2d 1026. Attorney And Client ⇨ 59.18

Where neither Bar Counsel nor attorney has filed any exceptions to report and recommendation of Board on Professional Responsibility in attorney disciplinary proceeding, Court of Appeals gives great deference to Board's recommendation. In *re Maignan*, 2007, 942 A.2d 1115. Attorney And Client ⇨ 57

If no exception has been taken to the report and recommendation of the Board on Professional Responsibility in an attorney disciplinary proceeding, the Court of Appeals gives heightened deference to the Board's recommendation. In *re Richardson*, 2007, 935 A.2d 1076. Attorney And Client ⇨ 57

In attorney disciplinary cases, the Court of Appeals reviews the Board of Professional Responsibility's conclusions of law de novo. In *re Cleaver-Bascombe*, 2006, 892 A.2d 396. Attorney And Client ⇨ 57

Substantial evidence in attorney disciplinary proceedings supported findings of the Board on Professional Responsibility that attorney neglected cases of three clients before United States District Court, misled them and lied to them as to status of their cases, and concealed from them his suspension from practice. In *re Schoeneman*, 2006, 891 A.2d 279. Attorney And Client ⇨ 53(2)

If neither the attorney nor Bar Counsel files objections or exceptions to the Board on Professional Responsibility's report in the attorney disciplinary proceeding, review of the Board's recommendation, by the Court of Appeals, is especially

deferential. In re Ponds, 2005, 888 A.2d 234. Attorney And Client ⇨ 57

Just as in an appeal from a trial court or an administrative agency, an attorney disciplinary proceeding before the Court of Appeals is not the appropriate occasion to raise an issue for the first time. In re Ponds, 2005, 888 A.2d 234. Attorney And Client ⇨ 57

Court of Appeals in disciplinary proceedings would consider attorney's claim that was entitled to object to questions posed in Bar Counsel's interrogatories or to assert his Fifth Amendment privilege during disciplinary investigation, even though attorney failed to raise claim when Bar Counsel filed motion to compel responses; Board on Professional Responsibility was given opportunity to consider issue in first instance, matter was one of first impression, and problematic interrogatories raised issue of how an objection to the questions should be raised. In re Artis, 2005, 883 A.2d 85. Attorney And Client ⇨ 57

Attorney who fails to present an issue to the Board on Professional Responsibility in attorney discipline proceedings waives it and cannot present it for the first time in Court of Appeals. In re Artis, 2005, 883 A.2d 85. Attorney And Client ⇨ 57

In deciding whether to accept the recommended sanction of Board on Professional Responsibility for attorney's violations of disciplinary rules, Court of Appeals considers the nature of the violation, prior disciplinary sanctions, mitigating and aggravating circumstances, protection of the public, courts and the legal profession, and, to the extent it can be determined, the moral fitness of the attorney. In re Artis, 2005, 883 A.2d 85. Attorney And Client ⇨ 57; Attorney And Client ⇨ 59.5(1)

The system of attorney discipline, including the imposition of sanctions, is the responsibility and duty of the Court of Appeals. In re Bingham, 2005, 881 A.2d 619. Attorney And Client ⇨ 36(1)

In deciding whether to adopt the Board on Professional Responsibility's sanction recommendation, in an attorney disciplinary case, the Court of Appeals must examine the nature of the violation, aggravating and mitigating circumstances, the absence or presence of prior disciplinary sanctions, the moral fitness of the attorney, and the need to protect the legal profession, the courts, and the public. In re Bingham, 2005, 881 A.2d 619. Attorney And Client ⇨ 57; Attorney And Client ⇨ 59.5(1)

When the Court of Appeals disagrees with the Board on Professional Responsibility as to the seriousness of the attorney disciplinary offense the Board's recommendations are accordingly granted less weight. In re Bingham, 2005, 881 A.2d 619. Attorney And Client ⇨ 57

So long as the Board on Professional Responsibility's disciplinary sanction recommendation falls within the wide range of acceptable outcomes, it comes to the Court of Appeals with a strong presumption in favor of its imposition, unless to do

so would foster a tendency towards inconsistent dispositions. In re Bingham, 2005, 881 A.2d 619. Attorney And Client ⇨ 57

Court of Appeals will accept the findings of the Board on Professional Responsibility as long as they are supported by substantial evidence in the record. In re Steinberg, 2005, 878 A.2d 496. Attorney And Client ⇨ 53(2)

Review of recommendation made by Board of Professional Responsibility is especially deferential and limited in circumstances where attorney and Bar Counsel consent to recommendation. In re Ventriglia, 2005, 878 A.2d 495. Attorney And Client ⇨ 57

Attorney's challenges on appeal to procedures of Hearing Committee were procedurally barred, where attorney failed to raise such challenges before Board on Professional Responsibility and challenged procedures did not result in substantial prejudice. In re Thyden, 2005, 877 A.2d 129. Attorney And Client ⇨ 57

Bar disciplinary system's findings and recommendations should not be set aside without good cause. In re Thyden, 2005, 877 A.2d 129. Attorney And Client ⇨ 57

Court of Appeals would decline to attempt to fashion disciplinary sanction functionally equivalent to indefinite suspension imposed by original disciplining court, where disbarment was normal sanction in District of Columbia for intentional misrepresentations during bar admission application process to degree displayed by attorney. In re Demos, 2005, 875 A.2d 636. Attorney And Client ⇨ 59.18

Appropriate question for Court of Appeals to address, in determining appropriateness of sanction of disbarment in reciprocal attorney disciplinary proceedings, where original disciplining court imposed lesser sanction of striking attorney from its roll of attorneys, was not whether bar counsel would have sought disbarment for attorney's misconduct if it had originally occurred in District of Columbia, but whether original discipline elsewhere was within range of sanctions possible in District of Columbia. In re Demos, 2005, 875 A.2d 636. Attorney And Client ⇨ 59.18

On review of recommendation of Board on Professional Responsibility in reciprocal attorney discipline proceeding, Court of Appeals was obligated at least to satisfy itself that no obvious miscarriage of justice would result from imposition of recommended sanction of disbarment, despite attorney's failure to participate in proceedings before Board, where disbarment was greater sanction than that imposed by original disciplining court. In re Demos, 2005, 875 A.2d 636. Attorney And Client ⇨ 57

Court of Appeals' review of report and recommendation of Board on Professional Responsibility in connection with suspended attorney's petition for reinstatement was especially deferential, where neither bar counsel nor petitioning attorney filed exceptions to such report and recommendation.

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In re Richardson, 2005, 874 A.2d 361. Attorney And Client ⇨ 61

Court of Appeals' review in uncontested attorney disciplinary cases is limited, and the presumption is in favor of identical reciprocal discipline. In re Harris-Smith, 2005, 871 A.2d 1183. Attorney And Client ⇨ 53(1); Attorney And Client ⇨ 57

Having asked the Board on Professional Responsibility to disregard her depression in disciplinary case, attorney could not complain on appeal that Board abided by her request. In re Edwards, 2005, 870 A.2d 90. Attorney And Client ⇨ 57

The ultimate issue in attorney discipline case, namely whether a particular sanction is warranted, requires Court of Appeals to consider the individual qualifications and fitness of the attorney whose case is before Court and, especially, the paramount need to protect the public, the courts, and the legal profession. In re Edwards, 2005, 870 A.2d 90. Attorney And Client ⇨ 59.5(1)

To ensure that Court of Appeals reaches consistent dispositions in determining appropriate sanction in attorney discipline cases, Court necessarily compares the instant case with prior cases in terms of the misconduct at issue, the attorney's disciplinary history, and any legitimate mitigating or aggravating circumstances. In re Edwards, 2005, 870 A.2d 90. Attorney And Client ⇨ 59.5(3)

The Court of Appeals standard of review in an attorney disciplinary case is a deferential one. In re Schlemmer, 2005, 870 A.2d 76. Attorney And Client ⇨ 57

The Court of Appeals' review in uncontested attorney disciplinary cases is limited, and the presumption is in favor of identical reciprocal discipline. In re McGann, 2004, 863 A.2d 864. Attorney And Client ⇨ 53(1); Attorney And Client ⇨ 57

Since attorney failed to respond to the show cause order or participate in the reciprocal disciplinary proceedings before the Board on Professional Responsibility, attorney, who was disbarred in Maryland for the unauthorized practice of law, could not challenge the imposition of reciprocal disbarment unless he could meet the "demanding" miscarriage of justice standard. In re Barneys, 2004, 861 A.2d 1270. Attorney And Client ⇨ 57

The Court of Appeals is bound—as is the Board on Professional Responsibility—by the hearing committee's finding of fact in an attorney discipline case. In re Austin, 2004, 858 A.2d 969. Attorney And Client ⇨ 57

To determine what discipline is appropriate under the circumstances, the Court of Appeals reviews the attorney's violations in light of the nature of the violation, the mitigating and aggravating circumstances, the need to protect the public, the courts, and the legal profession, and the moral fitness of the attorney. In re Austin, 2004, 858 A.2d 969. Attorney And Client ⇨ 59.5(1)

Ultimately, the system of attorney discipline, including the imposition of sanctions, is the responsibility and duty of the Court of Appeals. In re

Austin, 2004, 858 A.2d 969. Attorney And Client ⇨ 57

When the Court of Appeals disagrees with the Board on Professional Responsibility as to the seriousness of the offense or the demands of consistency, the Board's recommendations are accordingly granted less weight. In re Austin, 2004, 858 A.2d 969. Attorney And Client ⇨ 57

Faced with varying recommendations for disposition of attorney discipline proceedings, the imposition of sanction is for the Supreme Court. In re Kitchings, 2004, 857 A.2d 1059. Attorney And Client ⇨ 57

Attorney who was subject of disciplinary proceeding did not preserve for appeal argument that Hearing Committee erred in permitting a witness to testify via telephone from a foreign country, where nothing in record indicated that attorney raised argument to Board on Professional Responsibility, and attorney was given a full opportunity to refute the evidence. In re Rivlin, 2004, 856 A.2d 1086. Attorney And Client ⇨ 57

In attorney disciplinary proceeding, Court of Appeals is required to accept the findings of fact made by the Board on Professional Responsibility unless they are unsupported by substantial evidence of record, and shall adopt the recommended disposition of the Board unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Rivlin, 2004, 856 A.2d 1086. Attorney And Client ⇨ 57

The weight that the Court of Appeals accords to the Board on Professional Responsibility's (BPR) recommendation is even greater where neither Bar Counsel nor the attorney has excepted to it. In re Brown, 2004, 845 A.2d 519. Attorney And Client ⇨ 57

In determining whether a recommended attorney disciplinary sanction is appropriate, the Court of Appeals must consider the purpose served by Bar discipline, which is to protect the public, the courts, and the legal profession. In re Laibstain, 2004, 841 A.2d 1259. Attorney And Client ⇨ 57

Imposing reciprocal discipline based on default judgment against attorney who failed to participate in the proceedings in another state required the Court of Appeals to satisfy itself that the attorney was afforded due process and that she received actual notice prior to the imposition of the sanction. In re Ain, 2003, 837 A.2d 908. Attorney And Client ⇨ 59.18; Constitutional Law ⇨ 4273(3)

Attorney waived for appellate review claim that public censure should not have been imposed against him as reciprocal discipline, where he failed to present the claim to the Board on Professional Responsibility. In re Holdmann, 2003, 834 A.2d 887. Attorney And Client ⇨ 57

Although the ultimate choice of an attorney disciplinary sanction rests with the Court of Appeals, the Court is obliged to respect the Board on Professional Responsibility's sense of equity in such matters unless that exercise of judgment

proves to be unreasonable. In re Clower, 2003, 831 A.2d 1030. Attorney And Client ⇨ 57

Just as in an appeal from a trial court or an administrative agency, attorney disciplinary proceeding before Court of Appeals is not the appropriate occasion to raise an issue for the first time. In re Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 57

Court of Appeals did not need to consider attorney's claim that his reciprocal discipline suspension should have been imposed nunc pro tunc to the date on which interim order was entered suspending attorney, who had been indefinitely suspended in Maryland, in District of Columbia since this argument was raised for the first time at oral argument. In re Zdravkovich, 2003, 831 A.2d 964. Attorney And Client ⇨ 57

When considering a recommended disciplinary sanction against an attorney, Court of Appeals will accept the findings of fact of the Board on Professional Responsibility if they are supported by substantial evidence. In re Tidwell, 2003, 831 A.2d 953. Attorney And Client ⇨ 57

When considering a recommended disciplinary sanction against an attorney, Court of Appeals will adopt the recommended sanction of the Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Tidwell, 2003, 831 A.2d 953. Attorney And Client ⇨ 57

In attorney disciplinary case, Court of Appeals will review de novo any Board on Professional Responsibility determination of moral turpitude, since the ultimate issue of moral turpitude is one of law, rather than of fact. In re Tidwell, 2003, 831 A.2d 953. Attorney And Client ⇨ 57

In disciplinary cases, Court of Appeals must accept the findings of the Board on Professional Responsibility unless they are unsupported by substantial evidence. In re Tidwell, 2003, 831 A.2d 953. Attorney And Client ⇨ 57

In an attorney disciplinary matter, the Court of Appeals accepts the findings of fact made by the Board on Professional Responsibility unless they are unsupported by substantial evidence of record, and will adopt the recommendations of the Board unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Hallmark, 2003, 831 A.2d 366. Attorney And Client ⇨ 57

The Board on Professional Responsibility's recommended sanction in an attorney disciplinary matter comes to the Court of Appeals with a strong presumption in favor of its imposition. In re Hallmark, 2003, 831 A.2d 366. Attorney And Client ⇨ 57

The Board on Professional Responsibility's recommended sanction in an attorney disciplinary matter comes to the Court of Appeals with a strong presumption in favor of its imposition. In re Hallmark, 2003, 831 A.2d 366. Attorney And Client ⇨ 57

Generally speaking, if the Board on Professional Responsibility's recommended sanction in an attorney disciplinary matter falls within a wide range of acceptable outcomes, it will be adopted by the Court of Appeals and imposed. In re Hallmark, 2003, 831 A.2d 366. Attorney And Client ⇨ 57

Court of Appeals would impose the discipline of disbarment recommended by the Board of Professional Responsibility on attorney who had been suspended from the practice of law by the State of Florida, where attorney did not file a brief opposing the Board's recommendation; review of a Board's report was deferential when the attorney bypassed the opportunity to identify and brief issues. In re Hest, 2003, 825 A.2d 301. Attorney And Client ⇨ 57

Court of Appeals is required in attorney disciplinary proceeding to adopt the sanction recommended by Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 57

Appellate court would decline, in imposing one-year suspension on attorney for ethical violations in connection with settlement reached with manufacturer on potential class-action claims, to order disgorgement of \$125,000 payment of fees and expenses that attorney and co-counsel received from manufacturer, but would defer action on disgorgement issue until time of reinstatement; record did not indicate amount of fee that attorney personally received and was inadequate to resolve whether attorney was entitled to reasonable fee for work done prior to his unethical conduct or to determine who the proper recipients of disgorged fee should be. In re Hager, 2002, 812 A.2d 904, reinstatement granted 878 A.2d 1246. Attorney And Client ⇨ 153

After the Court of Appeals concluded that evidence did not support findings of misappropriation with respect to three of four clients involved in attorney discipline case, it was appropriate to remand matter to the Board on Professional Responsibility for further proceedings on issue of attorney's recklessness and a new recommendation as to the appropriate sanction, where Board had noted that case was an "extremely difficult" one when it originally recommended disbarment and had emphasized the extensive nature of attorney's violations, and Board's finding of recklessness had been largely based on what Board deemed "an extensive pattern of misappropriation." In re Edwards, 2002, 808 A.2d 476. Attorney And Client ⇨ 57

In an attorney disciplinary proceeding, the Court of Appeals will impose the sanction recommended by the Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Owens, 2002, 806 A.2d 1230. Attorney And Client ⇨ 57

The Court of Appeals would give heightened deference to findings and recommendations of the

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Board on Professional Responsibility, where neither bar counsel nor the attorney who is the subject of the disciplinary proceedings has opposed the Board's report and recommendation. In re Owens, 2002, 806 A.2d 1230. Attorney And Client ⇨ 57

Court of Appeals' scope of review is very limited when an attorney effectively concedes reciprocal discipline is warranted and the Board on Professional Responsibility's proposed sanction is appropriate, which occurs when attorney does not participate in any stage of the disciplinary proceedings and does not file an opposition to the Board's report or recommendation. In re Ladas, 2002, 798 A.2d 1067. Attorney And Client ⇨ 57

Appellate court will defer to findings of fact made by other courts in reciprocal attorney disciplinary proceedings. In re Sheridan, 2002, 798 A.2d 516. Attorney And Client ⇨ 57

The Court of Appeals' deference to the attorney disciplinary recommendation of Board on Professional Responsibility is heightened where neither Bar Counsel nor the attorney opposes it. In re Graham, 2002, 795 A.2d 51. Attorney And Client ⇨ 57

When the Court of Appeals reviews a recommended sanction against an attorney, it accepts the findings of fact of the Board on Professional Responsibility if they are supported by substantial evidence in the record. In re Davenport, 2002, 794 A.2d 602. Attorney And Client ⇨ 57

When the Court of Appeals reviews a recommended sanction against an attorney, it is required to adopt the recommended disposition of the Board on Professional Responsibility unless to do so would foster a tendency towards inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Davenport, 2002, 794 A.2d 602. Attorney And Client ⇨ 57

Court of Appeals gives heightened deference to the Board on Professional Responsibility when its recommendation for attorney discipline is unopposed. In re McDonough, 2002, 792 A.2d 245. Attorney And Client ⇨ 57

Deferential standard mandated by the Bar Rule provision that the Court of Appeals should adopt the recommended discipline of the Board of Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted, becomes even more deferential where the attorney has failed to contest the proposed sanction. In re Bewig, 2002, 791 A.2d 908. Attorney And Client ⇨ 57

Deference by Court of Appeals to the Board on Professional Responsibility is heightened where neither Bar Counsel nor attorney subject to disciplinary proceeding opposes the Board's report and recommendation. In re Mattingly, 2002, 790 A.2d 579. Attorney And Client ⇨ 57

The deferential standard mandated by bar rule governing review of recommendations by Board of Professional Responsibility becomes even more deferential where the attorney has failed to contest

the proposed sanction. In re Gregory, 2002, 790 A.2d 573. Attorney And Client ⇨ 57

Where neither Bar Counsel nor the attorney has excepted to the recommendation of the Board on Professional Responsibility regarding the sanction in a reciprocal discipline case, the Court of Appeals' review was highly deferential. In re Atkinson, 2001, 785 A.2d 318. Attorney And Client ⇨ 57

The test of "an obvious miscarriage of justice" defines the scope of review which both the Board on Professional Responsibility and the court apply to foreign discipline not opposed at the Board level. In re Harper, 2001, 785 A.2d 311. Attorney And Client ⇨ 59.18

The Court of Appeals' deference to the sanction recommended by the Board on Professional Responsibility is heightened where neither Bar Counsel nor the attorney opposes the Board's recommendation. In re Soininen, 2001, 783 A.2d 619. Attorney And Client ⇨ 57

Ultimately, the decision as to sanction for attorney misconduct is the responsibility and duty of the Court of Appeals. In re Fair, 2001, 780 A.2d 1106. Attorney And Client ⇨ 57

Bar Counsel's error in failing to obtain preapproval from Board on Professional Responsibility contact members before urging hearing committee to "dismiss" disciplinary charges in attorney's second stipulation was harmless, where the contact members reviewing the second stipulation directed Bar Counsel to prosecute the 12 charges it contained, and Bar Counsel had essentially prosecuted the 12 charges when presenting to the committee the stipulation recommending that the 12 stipulated violations be considered in aggravation of the sanction for the three violations contained in the first stipulation. In re Kitchings, 2001, 779 A.2d 926, opinion after remand 857 A.2d 1059. Attorney And Client ⇨ 57

Bar Counsel's failure to follow its own rules and regulations is "harmless error" if that error had no effect on the outcome of the disciplinary proceeding. In re Kitchings, 2001, 779 A.2d 926, opinion after remand 857 A.2d 1059. Attorney And Client ⇨ 57

The Court of Appeals is the ultimate sanctioning authority. In re Kitchings, 2001, 779 A.2d 926, opinion after remand 857 A.2d 1059. Attorney And Client ⇨ 57

Hearing committee's failure to make explicit findings of fact regarding its conclusion that attorney's stipulation with Bar Counsel was not the product of duress was not reversible error; sole purpose of one of committee's hearings was to explore the duress issue, and committee's reference to attorney's stipulations as "the accepted facts of the case" left no doubt that the committee implicitly found attorney's signature to be voluntary. In re Kitchings, 2001, 779 A.2d 926, opinion after remand 857 A.2d 1059. Attorney And Client ⇨ 54; Attorney And Client ⇨ 57

The deferential standard given to recommendations by the Board on Professional Responsibility

in attorney disciplinary cases becomes even more deferential where no exception is taken to the recommendation. In *re* Meisler, 2001, 776 A.2d 1207. Attorney And Client ⇨ 57

The Court of Appeals accepts the findings of the Board on Professional Responsibility as long as they are supported by substantial evidence in the record. In *re* Shaw, 2001, 775 A.2d 1123. Attorney And Client ⇨ 57

The Court of Appeals imposes the sanction recommended by the Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In *re* Shaw, 2001, 775 A.2d 1123. Attorney And Client ⇨ 57

The Board on Professional Responsibility's recommended attorney discipline comes to the Court of Appeals with a strong presumption in favor of its imposition; generally speaking, if the Board's recommended sanction falls within a wide range of acceptable outcomes, it will be adopted and imposed. In *re* Shaw, 2001, 775 A.2d 1123. Attorney And Client ⇨ 57

Court of Appeals deferentially reviews the Board on Professional Responsibility's proposed disposition of an attorney discipline case. In *re* Gonzalez, 2001, 773 A.2d 1026. Attorney And Client ⇨ 57

While Court of Appeals and Board on Professional Responsibility, in attorney discipline cases, are required to defer to the Hearing Committee's findings of evidentiary or subsidiary facts, no such deference is owed to Committee's determinations of ultimate facts, which implicate conclusions of law. In *re* Gonzalez, 2001, 773 A.2d 1026. Attorney And Client ⇨ 57

Hearing Committee's views as to purpose of Virginia's disciplinary rule proscribing disclosure of clients' secrets and type of information that constituted a "secret" under that rule were not issues of evidentiary fact; accordingly, Board on Professional Responsibility owed no deference to Committee's determinations on those issues. In *re* Gonzalez, 2001, 773 A.2d 1026. Attorney And Client ⇨ 57

Board on Professional Responsibility's exercise of broad discretion in handing out attorney discipline is subject only to a general review for abuse in that discretion's exercise. In *re* Lopes, 2001, 770 A.2d 561. Attorney And Client ⇨ 57

The Board on Professional Responsibility's recommended discipline comes to the Court of Appeals with a strong presumption in favor of its imposition. In *re* Lopes, 2001, 770 A.2d 561. Attorney And Client ⇨ 57

In general, if the Board on Professional Responsibility's recommended sanction falls within a wide range of acceptable outcomes, it will be adopted and imposed. In *re* Lopes, 2001, 770 A.2d 561. Attorney And Client ⇨ 57

Court of Appeals' determination, in attorney's appeal of probate court's judgment requiring attorney to return to the estate attorney fees that the

attorney had accepted without filing a petition for such fees with the probate court, that attorney had been performing services for the estate, collaterally estopped attorney, in a subsequent disciplinary proceeding in which he was charged with collecting an illegal fee, from contending that he had not been performing services for the estate. In *re* Travers, 2000, 764 A.2d 242. Executors And Administrators ⇨ 453(4)

The Court of Appeals generally defers to the Board on Professional Responsibility's sense of justice and its recommended sanction. In *re* Travers, 2000, 764 A.2d 242. Attorney And Client ⇨ 57

In deciding whether a sanction is appropriate, the Court of Appeals considers a variety of factors, including the nature of the violation, aggravating and mitigating circumstances, the absence or presence of prior disciplinary sanctions, the moral fitness of the attorney, and the need to protect the legal profession, the courts, and the public. In *re* Travers, 2000, 764 A.2d 242. Attorney And Client ⇨ 59.5(1)

The Court of Appeals, when deciding whether a sanction is appropriate, normally evaluates each case on its particular facts, taking into consideration such factors as mitigating and aggravating circumstances. In *re* Travers, 2000, 764 A.2d 242. Attorney And Client ⇨ 59.5(1)

17. Mitigating factors

In attorney discipline proceeding for attorney who submitted altered checks to trial court in child support hearing and made false statements to court, sufficient mitigating factors, including attorney's depression and genuine remorse for his actions, the lack of any prior disciplinary actions, his public service for close to twenty years as an Assistant United States Attorney, and the aberrant nature of the misconduct, warranted a reduction in suspension period imposed on attorney. In *re* Mayers, 2008, 943 A.2d 1170. Attorney And Client ⇨ 59.5(5)

Maryland's standard for mitigation of attorney discipline based on an attorney's disability, which requires proof of a lawyer's "utter inability to conform his or her conduct" to the rules of professional conduct, in addition to a showing of nothing less than "the most serious and utterly debilitating mental or physical health conditions, arising from any source that is the 'root cause' of the misconduct," is substantially different, and not merely somewhat different, from the District of Columbia's standard, which requires the attorney to show: (1) by clear and convincing evidence that he had a disability; (2) by a preponderance of the evidence that the disability substantially affected his misconduct; and (3) by clear and convincing evidence that he has been substantially rehabilitated, for purposes of reciprocal discipline analysis; the Maryland standard sets a substantially higher bar and will require an unmitigated sanction in some cases in which, in the District's jurisdiction, a mitigated sanction would be warranted. In *re* Zakroff, 2007, 934 A.2d 409, opinion after remand 956 A.2d 86. Attorney And Client ⇨ 59.18

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The occurrence of attorney's ethical violations in a personal context outside his usual practice as assistant general counsel at the Department of Consumer and Regulatory Affairs was a mitigating, rather than an aggravating, factor in determining what discipline to impose on attorney who incompetently represented interests of client, who was aged family friend, and engaged in a conflict of interest without full disclosure when he drafted her will; attorney's foray into estate planning represented a one-shot event of a personal nature. In re Long, 2006, 902 A.2d 1168. Attorney And Client ⇨ 59.5(4); Attorney And Client ⇨ 59.5(5)

18. Remand

Remand of reciprocal attorney disciplinary proceeding was required for Board on Professional

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Responsibility to conduct greater factual inquiry to determine whether substantially different discipline was warranted; while court in Virginia ordered five-year suspension of attorney's license to practice law after finding that attorney had been charged with being drunk in public and driving while intoxicated, the court made no finding that the underlying conduct had in fact occurred, and while the court found that attorney had a long history of filing civil actions against numerous and various defendants on grounds that were of questionable merit, the court did not say that the civil actions were frivolous, malicious, or filed for purposes of harassment. In re Ditton, 2008, 954 A.2d 986, opinion after remand 980 A.2d 1170. Attorney And Client ⇨ 57

§ 11-2503. Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment.

Law Review and Journal Commentaries

No Stone Left Unturned: The Failure of Attorney Self-Regulation in the District of Columbia.

Michael S. Frisch, 18 Geo. J. Legal Ethics 325 (2005).

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In regard to rule providing that it is professional misconduct for a lawyer to commit a criminal act, the Supreme Court disciplines for an attorney's conduct, not for any supposed violation of a criminal statute. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ⇨ 39

Although rule of professional conduct proscribing misconduct is applicable in cases in which an attorney has been convicted of a crime, an attorney is not immune from bar discipline merely because a complainant or prosecuting authority has chosen not to bring criminal charges. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ⇨ 39

2. In general

A conviction is not a prerequisite to a finding that a lawyer has violated rule providing that it is professional misconduct for a lawyer to commit a criminal act. In re Ditton, 2008, 954 A.2d 986, opinion after remand 980 A.2d 1170. Attorney And Client ⇨ 39

Automatic disbarment of attorney was warranted, where attorney pled guilty to three felonies of theft and fraud in New York, all of attorney's crimes were offenses involving moral turpitude, and statute provided for automatic disbarment of an attorney for conviction of an offense involving moral turpitude. In re Krouner, 2007, 920 A.2d 1039. Attorney And Client ⇨ 59.14(6)

In reciprocal disciplinary action, rebuttable presumption exists that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In re Wilkins, 2005, 887 A.2d 27. Attorney And Client ⇨ 59.18

In reciprocal disciplinary action, disbarment was appropriate sanction for attorney who was disbarred in Alabama for violating statute prohibiting possession of United States mail matter which had

1. Validity

Statute providing that disbarment for conviction of an offense involving moral turpitude was both mandatory and permanent in all cases in which a pardon has not been granted did not violate separation of powers. In re Krouner, 2007, 920 A.2d 1039. Attorney And Client ⇨ 1; Constitutional Law ⇨ 2374

been stolen, taken, embezzled or abstracted from an authorized depository; attorney's conviction of a felony involving fraudulent intent involved moral turpitude, and conviction of an offense involving moral turpitude warranted disbarment. In re Wilkins, 2005, 887 A.2d 27. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.18

Attorney's federal conviction of bankruptcy fraud resulted in his automatic disbarment. In re Standard, 2001, 788 A.2d 154. Attorney And Client ⇨ 59.14(6)

3. Construction and application

When an attorney's convictions on more than one count are involved, disbarment is mandated if any one of them involves moral turpitude. In re I. Lewis Libby, 2008, 945 A.2d 1169. Attorney And Client ⇨ 59.14(6)

4. Offenses involving moral turpitude—In general

Acts unrelated to the practice of law may nonetheless violate professional rule prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. In re Pelkey, 2008, 962 A.2d 268. Attorney And Client ⇨ 45

Attorney's actions throughout arbitration and subsequent disciplinary proceedings in attempting to suppress the truth regarding his business and personal relationships with individual, specifically concerning the manner in which attorney collected venture capital investment from individual only to withhold returns, violated professional rule prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. In re Pelkey, 2008, 962 A.2d 268. Attorney And Client ⇨ 42

Attorney's conduct in entering into business ventures with individual who contributed \$32,000 of her own funds as well as her full-time labor to support the ventures, only for attorney to leave individual out of ownership papers and deposit monetary returns from ventures in his own bank accounts, which he solely controlled, violated professional rule governing criminal conduct committed by lawyers that reflects adversely on the lawyer's honesty or trustworthiness. In re Pelkey, 2008, 962 A.2d 268. Attorney And Client ⇨ 39

A crime necessarily involves moral turpitude, as would mandate an attorney's disbarment, if it is contrary to justice, honesty, modesty, or good morals. In re Luvara, 2008, 942 A.2d 1125. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(6)

In determining whether a crime involves moral turpitude per se, as would mandate an attorney's disbarment, a court analyzes the statute of the criminal offense under which attorney was convicted, examining whether the least culpable offender under the terms of the statute necessarily engages in conduct involving moral turpitude. In re Luvara, 2008, 942 A.2d 1125. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(6)

A crime may involve moral turpitude, as would mandate disbarment of attorney who committed crime, either inherently, i.e., by consideration strictly of its statutory elements, or on the facts of a particular case. In re Luvara, 2008, 942 A.2d 1125. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(6)

Attorney's conviction in Pennsylvania of intimidation of a witness involved moral turpitude per se, and thus disbarment was mandated; conviction required intent or knowledge that his conduct would obstruct, impede, impair, prevent or interfere with the administration of criminal justice. In re Luvara, 2008, 942 A.2d 1125. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(6)

Disbarment was appropriate reciprocal discipline for attorney whose license was revoked in Virginia and whose license was suspended in California following his conviction in California for insider trading, where California Supreme Court found that the conviction involved moral turpitude, attorney did not take exception to Board on Professional Responsibility's recommendation of disbarment, and there was no miscarriage of justice in the Virginia or California matters. In re Wittenberg, 2008, 941 A.2d 444. Attorney And Client ⇨ 59.18

Attorney's misdemeanor convictions in another jurisdiction of sexual battery and simple battery, committed against a client, constituted crimes of moral turpitude on the facts and were grounds for disbarment, where attorney engaged in sordid sexual contact with and abuse of female client who sought his advice concerning divorce action taken by her husband, attorney's conduct was for his own personal gratification which exceeded his ability to demonstrate public respect and appreciation of existing societal morals and values, and client and victim was quite vulnerable. In re Rehberger, 2006, 891 A.2d 249, certiorari denied 127 S.Ct. 354, 549 U.S. 844, 166 L.Ed.2d 76. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(5)

Felony offense of making false statements in relation to documents required by the Employee Retirement Income Security Act (ERISA) warranted disbarment. In re Susman, 2005, 876 A.2d 637. Attorney And Client ⇨ 59.14(4)

Presumptive sanction for intentional misappropriation, in attorney disciplinary proceedings in the District of Columbia, is disbarment. In re Wheeler, 2005, 871 A.2d 476. Attorney And Client ⇨ 53(1)

Once the Court of Appeals determines that a particular crime committed by an attorney involves moral turpitude per se, disbarment must be imposed. In re Wheeler, 2005, 871 A.2d 476. Attorney And Client ⇨ 59.14(6)

Attorney's convictions upon guilty pleas to 21 counts of mail fraud, false statements, and theft of government funds involved crimes of moral turpitude per se, thus requiring disbarment from practice of law. In re Young, 2004, 863 A.2d 811. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(6)

Conduct underlying attorney's federal conviction for conflict of interest, which was a non-serious misdemeanor, involved moral turpitude, and thus, disbarment was warranted as disciplinary sanction; attorney, while employed as hearing examiner for Bureau of Traffic Adjudication (BTA), on 20 occasions in 16-month period dismissed parking citations issued to vehicles registered to him, his wife, and two of his daughters, attorney held position of trust as government employee with adjudicative responsibilities, and attorney acted to benefit himself financially. In re Sims, 2004, 861 A.2d 1. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(5)

Attorney's conduct in failing to stop his car after he hit individual with a force that shattered windshield and was loud enough to be heard by neighbors in their houses and in failing to notify the authorities until several days later involved moral turpitude, and because attorney's conduct involved moral turpitude, disbarment was mandatory in reciprocal disciplinary proceeding involving attorney who was disbarred in New York after he entered a plea of guilty to a charge of leaving the scene of a fatal automobile accident without reporting it. In re Tidwell, 2003, 831 A.2d 953. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.18

A lawyer need not actually be convicted of a crime of moral turpitude in order to be disbarred on the basis of the underlying conduct. In re Corizzi, 2002, 803 A.2d 438. Attorney And Client ⇨ 59.14(5)

Attorney's convictions for perjury, conspiracy to commit wire fraud, and conspiracy to commit obstruction of justice were crimes involving moral turpitude per se, and thus, disbarment was mandated. In re Gornley, 2002, 793 A.2d 469. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(6)

Disbarment, as recommended by Board of Professional Responsibility, was warranted sanction for crime involving moral turpitude, namely misdemeanor sexual contact with minor, to which attorney pleaded guilty, even though attorney indicated that mental state was to some degree impaired, where Board concluded that evidence indicated that attorney sufficiently understood wrongfulness of behavior and was aware that minor victim was legally incapable of consent, and attorney failed to contest disbarment as sanction. In re Bewig, 2002, 791 A.2d 908. Attorney And Client ⇨ 59.14(5)

Offenses related to espionage were crimes involving moral turpitude per se, and thus, attorney's convictions for such offenses required disbarment. In re Squillacote, 2002, 790 A.2d 514.

The acts that led to attorney's misdemeanor conviction for attempted bribery involved intentional dishonesty for personal gain, and thus amounted to moral turpitude, warranting disbarment, even though they involved relatively small amounts of money, where on a number of occasions attorney paid a clerk at Bureau of Traffic Adjudication (BTA) one-third to one-half of the amount

attorney owed on a parking ticket to have the clerk make the BTA records indicate the tickets were either dismissed or paid. In re Tucker, 2000, 766 A.2d 510. Attorney And Client ⇨ 59.14(5)

When attorney's misdemeanor conviction is at issue in disciplinary proceeding, it is not enough to look solely to elements of offense to determine existence of moral turpitude requiring disbarment, even if offense would involve moral turpitude per se were it a felony. In re Spiridon, 2000, 755 A.2d 463, reinstatement denied 816 A.2d 809. Attorney And Client ⇨ 59.14(5)

Board on Professional Responsibility may examine circumstances surrounding attorney's commission of misdemeanor which fairly bear on question of moral turpitude in its actual commission, such as motive or mental condition. In re Spiridon, 2000, 755 A.2d 463, reinstatement denied 816 A.2d 809. Attorney And Client ⇨ 59.14(2)

4.3. — Mootness, offenses involving moral turpitude

Court of Appeals' referral to Board on Professional Responsibility, for determination, in reciprocal discipline proceeding after attorney's voluntary resignation from the California Bar during a disciplinary investigation in California relating to attorney's felony conviction in California for conspiracy to commit the unauthorized practice of law, whether the felony conviction was for a crime of moral turpitude, was moot, where attorney, after such referral, voluntarily resigned from California Bar, resulting in California disciplinary proceedings being held in abeyance until attorney applied for reinstatement in California, with attorney precluded from seeking reinstatement in California for five years. In re Weaver, 2008, 954 A.2d 425. Attorney And Client ⇨ 54

4.5. — Disbarment

Attorney's persistent, protracted, and extremely serious and flagrant acts of dishonesty as witnessed by an arbitrator, the hearing committee, and the California State Court of Appeal, in addition to his criminal conduct in seeking to deprive individual of any of the benefits of her labor and investments in business ventures by taking and controlling the monetary fruits of the ventures for his own personal use, warranted disbarment from practice of law. In re Pelkey, 2008, 962 A.2d 268. Attorney And Client ⇨ 59.14(1); Attorney And Client ⇨ 59.14(4)

Attorney's conviction for conspiracy to defraud the United States was inherently a crime of moral turpitude, and thus, disbarment was required, by statute. In re Hoover-Hankerson, 2008, 953 A.2d 1025. Attorney And Client ⇨ 59.14(6)

When an attorney is convicted of multiple offenses, disbarment is imposed if any one of them involves moral turpitude per se. In re Hoover-Hankerson, 2008, 953 A.2d 1025. Attorney And Client ⇨ 59.14(6)

5. — “Moral turpitude” defined, offenses involving moral turpitude

Bar Counsel did not establish in disciplinary proceeding by clear and convincing evidence that attorney, who pled guilty to the crime of misdemeanor theft of property after stealing merchandise from retail stores through a scheme of purchase and fraudulent return, was motivated by an intentional desire for personal gain, and thus that attorney's conduct involved moral turpitude requiring disbarment; attorney had moved with his family at least five times in the eight months before his string of thefts began, was working as an assistant to the President of the United States, was tasked with leading the White House response to a hurricane of immense proportions, was working long hours, and had been subjected to extreme stress. In re Allen, 2011, 27 A.3d 1178. Attorney And Client ⇨ 53(2); Attorney And Client ⇨ 59.14(6)

For purposes of attorney discipline, a crime involves “moral turpitude” if the act denounced by statute: (1) offends the generally accepted moral code of mankind; (2) involves baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man; or (3) is contrary to justice, honesty, modesty, or good morals. In re Rehberger, 2006, 891 A.2d 249, certiorari denied 127 S.Ct. 354, 549 U.S. 844, 166 L.Ed.2d 76. Attorney And Client ⇨ 39

Attorney's guilty plea in federal court to three counts of making false statements to a government agency warranted one-year suspension from practice of law, with no fitness requirement for reinstatement, and dismissal of reciprocal disciplinary referral from state of Virginia, where offense of conviction did not involve moral turpitude, either per se or on facts of attorney's case. In re Belardi, 2006, 891 A.2d 224. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.18

A crime may involve moral turpitude, as to warrant disbarment of attorney, either inherently, i.e., by consideration strictly of its statutory elements, or on the facts of a particular case. In re Carpenter, 2006, 891 A.2d 223. Attorney And Client ⇨ 39

If the Board on Professional Responsibility determines that an offense committed by an attorney does not involve moral turpitude per se, a hearing is necessary to determine whether the underlying facts involve moral turpitude. In re Wheeler, 2005, 871 A.2d 476. Attorney And Client ⇨ 39

Determination by the Board on Professional Responsibility of whether a crime committed by an attorney involves moral turpitude per se is based solely on an examination of the elements of the statutory offense. In re Wheeler, 2005, 871 A.2d 476. Attorney And Client ⇨ 39

Attorney's conviction in another jurisdiction of misapplication of entrusted property, per se a crime of moral turpitude, required his disbarment. In re Wheeler, 2005, 871 A.2d 476. Attorney And Client ⇨ 59.14(6)

“Moral turpitude” which results in automatic disbarment is conduct that is contrary to justice, honesty, or morality in context of attorney disciplinary proceeding. In re Tidwell, 2003, 831 A.2d 953. Attorney And Client ⇨ 39

Felony theft by attorney, his fraudulent misappropriation as a fiduciary, and obstruction of justice were “offenses involving moral turpitude” per se and warranted disbarment. In re Taylor, 2001, 765 A.2d 546. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(5)

6. — Conspiracy offenses, offenses involving moral turpitude

Conviction of conspiracy to commit a crime of moral turpitude is itself a crime of moral turpitude, which results in mandatory disbarment of a member of the District of Columbia Bar. In re Lickstein, 2009, 972 A.2d 314. Attorney And Client ⇨ 59.14(6)

Attorney's conviction in Connecticut for capital felony, murder as an accessory, and conspiracy to commit murder, which were equivalent to commission of, or conspiracy to commit, first-degree premeditated murder under District of Columbia law, involved moral turpitude per se, and thus, disbarment was mandated. In re Carpenter, 2006, 891 A.2d 223. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.18

Attorney's conviction for conspiring to engage in a monetary transaction in property believed to be derived from illegal drug trafficking was for a crime of moral turpitude, and thus, disbarment, rather than suspension, was warranted; drug trafficking, especially on the large scale suggested by the purported agent in this case, was sufficiently egregious that attorney's knowing and willing involvement in it, albeit only in integral financial aspects, evidenced moral turpitude. In re Lee, 2000, 755 A.2d 1034. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(5)

6.5. — Drugs, offenses involving moral turpitude

Disbarment was required sanction for attorney who had been convicted of distribution of controlled substance, which was crime involving moral turpitude. In re Jafroodi, 2008, 948 A.2d 1178. Attorney And Client ⇨ 59.14(6)

Suspension of attorney for 30 days, but with Kersey mitigation for professional misconduct substantially affected by the attorney's addiction to lawfully obtained prescription drugs, so that the suspension would be stayed during two years of conditional probation, was appropriate for attorney whose misconduct had resulted in misdemeanor convictions for theft and possession of a controlled substance not obtained pursuant to a valid prescription. In re Sojininen, 2001, 783 A.2d 619. Attorney And Client ⇨ 59.17(1)

Kersey mitigation, for professional misconduct substantially affected by the attorney's addiction to lawfully obtained prescription drugs, may be used in appropriate cases where the misconduct has resulted in misdemeanor convictions of crimes not

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involving moral turpitude. In re Soininen, 2001, 783 A.2d 619. Attorney And Client ⇨ 59.5(5)

Mitigation of the sanction for violation of attorney disciplinary rule is not available in cases of addiction to illegal drugs. In re Soininen, 2001, 783 A.2d 619.

Attorney's possession of a controlled substance with intent to distribute is a crime of moral turpitude per se, mandating disbarment. In re Lee, 2000, 755 A.2d 1034. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(6)

Where drug trafficking is involved, even an attorney who has never actually possessed the drugs may be disbarred. In re Lee, 2000, 755 A.2d 1034. Attorney And Client ⇨ 59.14(4)

7. — Forgery and fraud offenses, offenses involving moral turpitude

There was no evidence in attorney disciplinary proceeding that attorney knew that form he signed as officer of communications company contained false representations of fact regarding source of funding for a private purchase of company's common stock, as necessary for a finding that his resulting conviction under federal statute for willful false entries or willful neglect to make full, true and correct entries in records of a carrier subject to Federal Communications Commission regulation involved moral turpitude so as to require disbarment, though attorney's signature certified that the information on form was true, complete, and correct based on a reasonable inquiry. In re Rigas, 2010, 9 A.3d 494. Attorney and Client ⇨ 59.14(5)

Disbarment of attorney was warranted, in attorney disciplinary case, where attorney pled guilty to five counts of theft, two counts of fraud, and contempt of court in connection with attorney's conduct in swindling a series of landlords and prospective tenants, and attorney's offenses involved moral turpitude, thus warranting disbarment under statute. In re Hallmark, 2010, 998 A.2d 284. Attorney And Client ⇨ 59.14(5)

Disbarment was appropriate sanction for attorney convicted of offense of mail fraud, a crime of moral turpitude per se. In re Juliano, 2006, 912 A.2d 553. Attorney And Client ⇨ 59.14(5)

Attorney's conduct in committing misdemeanor offense of drawing a check of less than \$200 on insufficient funds, with intent to defraud, and failing to report conviction and public reprimand by bar in other jurisdiction to Bar Counsel, warranted 30-day suspension, in light of fact that offense did not constitute crime involving moral turpitude. In re Powell, 2003, 836 A.2d 579. Attorney And Client ⇨ 59.13(5)

Attorney's conviction for bank fraud was crime of moral turpitude per se and warranted disbarment. In re Kelly, 2003, 816 A.2d 52. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(5)

Disbarment from practice of law was warranted for attorney who was convicted of mail fraud in the United States District Court for the District of

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Maryland. In re Laub, 2002, 810 A.2d 413. Attorney And Client ⇨ 59.14(4)

Attorney's convictions for mail fraud and wire fraud involved moral turpitude per se, and thus, disbarment was mandated. In re Evans, 2002, 793 A.2d 468. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(6)

Bankruptcy fraud is a crime that inherently involves moral turpitude, and an attorney's disbarment is mandatory upon his or her conviction thereof. In re Standard, 2001, 788 A.2d 154. Attorney And Client ⇨ 59.14(6); Bankruptcy ⇨ 3861

8. — Obstruction of justice, offenses involving moral turpitude

Attorney's convictions for obstruction of justice and perjury were crimes involving moral turpitude per se, and thus, disbarment was mandated. In re I. Lewis Libby, 2008, 945 A.2d 1169. Attorney And Client ⇨ 59.14(6)

Disbarment of lawyer who instructed two clients to lie at depositions so as to conceal his referral relationship with chiropractor was warranted; although lawyer had no been convicted, subornation of perjury was a crime of moral turpitude, and lawyer's conduct resulted in the virtual destruction of clients' cases and exposed clients to possible criminal prosecution. In re Corizzi, 2002, 803 A.2d 438. Attorney And Client ⇨ 59.14(5)

Obstruction of justice inherently involves moral turpitude, and therefore conspiracy to commit obstruction of justice is a crime of moral turpitude per se for purposes of imposing sanctions in attorney disciplinary proceedings. In re Gormley, 2002, 793 A.2d 469. Attorney And Client ⇨ 39

8.3. — Witness tampering, offenses involving moral turpitude

For purposes of attorney disciplinary proceeding, offense of witness tampering constituted offense of moral turpitude per se; conviction required proof of the knowing or intentional interference with the enforcement of law. In re Blair, 2012, 2012 WL 573157. Attorney and Client ⇨ 39

8.5. — Bribes, offenses involving moral turpitude

Conspiracy to bribe state court judge with \$40,000 payment for favorable ruling was "crime of moral turpitude" per se within the meaning of statute requiring mandatory disbarment following conviction of crime or moral turpitude; bribery inherently involved moral turpitude, and conspiracy to commit crime of moral turpitude was itself crime of moral turpitude. In re Balducci, 2009, 976 A.2d 899. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(6)

9.5. — Sexual misconduct, offenses involving moral turpitude

Despite not directly implicating honesty or trustworthiness, sexually abusive contact, because of its inherently violent nature, calls into question one's fitness as a lawyer for purposes of rule providing

that it is professional misconduct for an attorney to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness. In re Harkins, 2006, 899 A.2d 755. Attorney And Client ⇨ 39

The aggregate of attorney's multiple sexually abusive contacts and stalker-like harassments rose to the level of professional misconduct in violation of rule providing that it is professional misconduct for an attorney to commit criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness; attorney touched victim multiple times in a sexually inappropriate manner, rubbing against her leg, touching her thigh, and finally touching her buttocks, and attorney then proceeded to follow victim throughout the subway compartment as she sought to evade his unwanted advances. In re Harkins, 2006, 899 A.2d 755. Attorney And Client ⇨ 39

Attorney's sexual misconduct with minors and children directly implicates an attorney's trustworthiness because such actions imply a willingness to take advantage of those in a subordinate and vulnerable position for purposes of rule providing that it is professional misconduct for an attorney to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness. In re Harkins, 2006, 899 A.2d 755. Attorney And Client ⇨ 39

11. — Theft offenses, offenses involving moral turpitude

Disbarment was mandatory sanction for attorney's Missouri conviction for felony stealing that resulted in disbarment in Missouri. In re Davis, 2007, 940 A.2d 108. Attorney And Client ⇨ 59.18

For purposes of determining appropriate penalty in attorney disciplinary proceedings, offense of misapplication of entrusted property, as statutorily defined in New Jersey, was offense of moral turpitude per se; conviction of misapplication of entrusted property required evidence of knowing misuse of such property, and offense was similar to felony theft, itself a crime of moral turpitude per se, but applied only to persons entrusted with property as a fiduciary. In re Wheeler, 2005, 871 A.2d 476. Attorney And Client ⇨ 39

Three criminal offenses of grand larceny for which attorney was convicted in New York inherently involved moral turpitude, and thus required disbarment. In re McCoole, 2002, 791 A.2d 910. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(6)

Disbarment was proper sanction for attorney's theft of fraternal organization's funds and his dishonest and deceitful deposition testimony in lawsuit that he filed against the national chapter of the organization, where attorney reimbursed the funds only after he was caught, subsequent to his making false statements in the deposition to conceal his actions. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ⇨ 59.14(2)

Attorney's Maryland conviction for misdemeanor theft of \$18 was not an offense involving moral turpitude requiring disbarment; rather, it warrant-

ed one-year suspension from practice of law. In re Spiridon, 2000, 755 A.2d 463, reinstatement denied 816 A.2d 809. Attorney And Client ⇨ 59.13(5)

Theft of government property is a "crime of moral turpitude" per se within the meaning of statute which mandates disbarment upon conviction for an offense involving moral turpitude. In re Dowdey, 2004, 861 A.2d 602. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(6)

12. Pardons

A full and unconditional presidential pardon after attorney's disbarment for federal convictions for conspiracy, obstruction of justice, and unlawful travel in interstate commerce with intent to commit bribery, did not entitle attorney to automatic reinstatement to practice law without regard to whether he had established fitness to practice; attorney was required to file appropriate application for reinstatement with Board on Professional Responsibility. In re Borders, 2002, 797 A.2d 716, certiorari denied 124 S.Ct. 432, 540 U.S. 966, 157 L.Ed.2d 311. Attorney And Client ⇨ 61

13. Reinstatement

For purposes of calculating when attorney could apply for reinstatement following his disbarment due to his convictions for crimes of moral turpitude, attorney's disbarment would be deemed to have commenced on date on which he filed his initial suspension affidavit, and the period of time during which his initial suspension was lifted and he was authorized to practice law would be excluded. In re Safavian, 2011, 29 A.3d 470. Attorney and Client ⇨ 61

Evidence was sufficient to establish, in attorney disciplinary proceeding, that attorney suffered from a delusional disorder of a persecutory type and thus would be required to demonstrate fitness before he was authorized to resume the practice of law; there was evidence that attorney was convinced that he was the victim of a wide-reaching conspiracy, and a psychiatrist and psychologist each testified in separate proceedings that his allegations were delusional and that the attorney's litigation record of filing numerous civil actions of questionable merit manifested his condition. In re Ditton, 2009, 980 A.2d 1170. Attorney And Client ⇨ 59.13(7)

Attorney's conduct, while practicing law in other state in which he was licensed, in admittedly charging his client an excessive fee, failing to respond to client's attempts to contact him, failing to return unearned fees, failing to put a retainer in a separate trust account, and failing to respond to Attorney Grievance Commission's inquiries regarding his client's complaint warranted reciprocal discipline, equal to that imposed in other state, of indefinite suspension of license to practice law, with stringent conditions for reinstatement. In re Brown, 2006, 890 A.2d 260. Attorney And Client ⇨ 59.18

For the purpose of seeking reinstatement to the bar, disbarment period was deemed to run nunc pro tunc from date of attorney's deficient affidavit which was filed after suspension and was later

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corrected to demonstrate compliance with order and disciplinary rule and to list jurisdictions and administrative agencies to which the attorney is admitted to practice. In *re* Susman, 2005, 876 A.2d 637. Attorney And Client ⇨ 61

Suspended attorney failed to show by clear and convincing evidence that he was fit to resume practice of law. In *re* Richardson, 2005, 874 A.2d 361. Attorney And Client ⇨ 61

Ordinarily, reinstatement following a disability suspension may be sought by attorney after one year has passed, absent court order shortening that period. In *re* Aldridge, 2005, 873 A.2d 335. Attorney And Client ⇨ 61

Disbarment was appropriate sanction for attorney who was hired by clients to help them administer individual's estate and who embezzled a total of at least \$73,850 from that estate, and as a condition of reinstatement, attorney would be directed to pay restitution to the estate; evidence showed a calculated pattern, over a period of time, of withdrawals from fiduciary accounts that were deposited into attorney's personal account, coupled with a deliberate effort to conceal this fact from Bar Counsel, as well as from the representatives and beneficiaries of the estate. In *re* Alexander, 2005, 865 A.2d 541. Attorney And Client ⇨ 59.14(2)

In making its assessment of rehabilitation and good moral character of bar applicant who had previously been convicted of grand larceny, Committee on Admissions utilized inappropriate procedure in failing to hold its own hearing, and instead relying upon proceedings from other jurisdiction that led to his admission to bar of other jurisdiction; record showed serious split of views in other jurisdiction regarding applicant's rehabilitation and credibility, and conflicting findings could not serve as acceptable substitute for searching inquiry. In *re* Levi, 2004, 853 A.2d 702. Attorney And Client ⇨ 7

Reinstatement of attorney who was under indefinite suspension on account of disability, relating to long-term abuse of alcohol, marijuana, and cocaine, was warranted, where attorney's addictions were in sustained full remission, though attorney owed substantial amounts in taxes and in child support and he was in arrears in restitution payments owed to Client Security Fund, attorney had omitted significant material information from his reinstatement questionnaire, and attorney had failed to disclose a major asset to the Fund; attorney had been unemployed or underemployed and he had recognized his debts and had begun his efforts to satisfy them, omissions from questionnaire were not result of effort to mislead or conceal, and attorney had not intended to mislead the Fund. In *re* Brown, 2004, 845 A.2d 519. Attorney And Client ⇨ 61

Record supported conclusion of Board on Professional Responsibility that attorney had done little to rectify the circumstances which led to his disbarment, as required for reinstatement, considering that, in the years since disbarment, attorney's bank accounts were overdrawn frequently, he

had outstanding judgments against him, and the misconduct for which attorney was disbarred was prompted by his precarious financial situation. In *re* Patkus, 2004, 841 A.2d 1268. Attorney And Client ⇨ 61

Five factors to be considered in an attorney reinstatement case include: (1) nature and circumstances of misconduct for which attorney was disciplined; (2) whether attorney recognizes seriousness of misconduct; (3) attorney's conduct since discipline was imposed, including steps taken to remedy past wrongs and prevent future ones; (4) attorney's present character; and (5) attorney's present qualifications and competence to practice law. In *re* Patkus, 2004, 841 A.2d 1268. Attorney And Client ⇨ 61

Review of the Board on Professional Responsibility's recommendation concerning reinstatement as member of the bar is especially deferential where neither the attorney petitioner nor Bar Counsel filed objections or exceptions to Board's report in Court of Appeals. In *re* Patkus, 2004, 841 A.2d 1268. Attorney And Client ⇨ 61

While the Board on Professional Responsibility's recommendation is entitled to great weight, the ultimate decision of whether an attorney should be reinstated rests with the Court of Appeals. In *re* Patkus, 2004, 841 A.2d 1268. Attorney And Client ⇨ 61

Attorney who previously had been disbarred for intentionally misappropriating client funds would be required to make restitution to the client of the illegal \$500 fee that attorney received, with interest at the legal rate of six percent per annum, as a condition of reinstatement; the obligation to pay interest was intertwined with the obligation to make restitution. In *re* Jackson, 2002, 801 A.2d 38. Attorney And Client ⇨ 61

Disbarred attorney who refused to reimburse the Client Security Fund for payments made to wronged clients and downplayed his culpability for the conduct for which he was sanctioned was not entitled to reinstatement. In *re* Haupt, 2002, 801 A.2d 27. Attorney And Client ⇨ 61

A disbarment in the District of Columbia is not necessarily permanent; a petition for reinstatement may be filed after five years. In *re* Meisler, 2001, 776 A.2d 1207. Attorney And Client ⇨ 61

Attorney who had been suspended from practice of law, with his reinstatement conditioned on proof of fitness to practice law, would be reinstated, on conditions that he implement restitution plan recommended by Board on Professional Responsibility and report his progress to Bar Counsel every six months, continue his consultation with lawyers' counseling committees for at least three years after reinstatement and report to Bar Counsel concerning consultations every six months, and be placed under supervision of a practice monitor appointed by Board for one year. In *re* Roxborough, 2001, 775 A.2d 1063. Attorney And Client ⇨ 61

Caution should be exercised in ordering reinstatement of a suspended attorney to practice of

law where substantial amounts in restitution remain to be paid. In *re Roxborough*, 2001, 775 A.2d 1063. Attorney And Client ⇨ 61

Deference accorded to recommendation by Board of Professional Responsibility with regard to suspended attorney's petition for reinstatement is even greater where attorney's position has the active support of the Office of Bar Counsel. In *re Roxborough*, 2001, 775 A.2d 1063. Attorney And Client ⇨ 61

Supreme Court would not impose, as condition of suspended attorney's reinstatement to practice of law, that attorney certify to having read Voluntary Standards of Civility in Professional Conduct of District of Columbia Bar, notwithstanding attorney's resort to intemperate and inflammatory rhetoric throughout history of disciplinary proceedings; standards are voluntary and aspirational in nature, and are not binding on attorneys. In *re Bernstein*, 2001, 774 A.2d 309. Attorney And Client ⇨ 61

Attorney would be disbarred *nunc pro tunc* to date that he filed an affidavit in full compliance with professional rules, not to date he first filed requisite affidavit, where first affidavit was incomplete, for purposes of determining eligibility for reinstatement. In *re Tucker*, 2000, 766 A.2d 510. Attorney And Client ⇨ 60

Suspension for 90 days, with reinstatement conditioned upon attorney paying the \$3,652.74 judgment rendered against him for accepting attorney fees from an estate without filing with the probate court a petition for such fees, as was then required by statute, was appropriate sanction for attorney's collection of an illegal fee and his interference with the administration of justice by failing to pay the judgment. In *re Travers*, 2000, 764 A.2d 242. Attorney And Client ⇨ 59.13(3); Attorney And Client ⇨ 61

13.5. Reciprocal discipline

Attorney's five-year suspension in District of Columbia, as reciprocal discipline, could not be imposed *nunc pro tunc* to date of interim suspension, even if the five-year suspension, when added to attorney's interim suspension upon attorney providing notice to Bar Counsel that he had been convicted of a felony in another state, could result in a suspension longer than five-year disciplinary suspension in the other state; order imposing interim suspension had specifically directed attorney's attention to Bar Rule requiring filing of affidavit demonstrating with particularity, and with supporting proof, that attorney had fully complied with interim-suspension order, and a longer suspension in District of Columbia would be the consequence of attorney's failure to file the affidavit. In *re Weaver*, 2008, 954 A.2d 425. Attorney And Client ⇨ 59.18

Five-year suspension, with a fitness requirement for reinstatement, would be imposed as reciprocal discipline in District of Columbia, after attorney's voluntary resignation from the California Bar during a disciplinary investigation in California relating to attorney's felony conviction in California for conspiracy to commit the unauthorized practice of

law; attorney's voluntary resignation from California Bar resulted in the California disciplinary proceedings being held in abeyance until attorney applied for reinstatement in California, with attorney precluded from seeking reinstatement in California for five years. In *re Weaver*, 2008, 954 A.2d 425. Attorney And Client ⇨ 59.18

Three-year suspension from practice of law, with reinstatement upon proof of fitness, was appropriate reciprocal sanction for attorney's guilty plea in Kentucky to criminal charges of possession of cocaine, possession of prescription drug not in original container, and possession of drug paraphernalia, for which attorney was similarly sanctioned in Kentucky, in violation of Rules of Professional Conduct that prohibited attorney from committing criminal acts that reflected adversely on attorney's fitness as lawyer. In *re Sawyer*, 2008, 953 A.2d 1019. Attorney And Client ⇨ 59.18

Attorney's criminal conviction in another jurisdiction warranted imposition of effectively reciprocal discipline consisting of three-year suspension from practice of law with fitness requirement for reinstatement, where jurisdiction in which attorney was convicted imposed indefinite suspension, which sanction was not provided for in District of Columbia bar rules, and fitness requirement permitted deferral of question of whether attorney's extrajurisdictional conviction involved crime of moral turpitude, without necessity for immediate hearing. In *re Gailliard*, 2008, 944 A.2d 1109. Attorney And Client ⇨ 59.18

Imposition of reciprocal discipline that was functionally identical to that imposed in other jurisdiction, suspending attorney from the practice of law for five years, rendered moot the parallel disciplinary proceedings stemming from attorney's conviction for tax evasion, where attorney's potential reinstatement under reciprocal discipline was conditioned upon his demonstrating fitness to practice law. In *re Uscinski*, 2010, 2 A.3d 154. Attorney And Client ⇨ 60

14. Practice and procedure—In general

In an attorney discipline case, a court or hearing committee may look to the law of any jurisdiction that could have prosecuted attorney for alleged misconduct to determine whether the attorney's conduct is a "criminal act" under the rule of professional conduct prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. In *re Mitrano*, 2008, 952 A.2d 901, certiorari denied 129 S.Ct. 2064, 173 L.Ed.2d 1134. Attorney And Client ⇨ 39

Reciprocal attorney disciplinary proceeding was dismissed as moot, where attorney's misdemeanor convictions in another jurisdiction of sexual battery and simple battery, committed against a client, constituted crimes of moral turpitude on the facts under District of Columbia law and were independent grounds for disbarment. In *re Rehberger*, 2006, 891 A.2d 249, certiorari denied 127 S.Ct. 354, 549 U.S. 844, 166 L.Ed.2d 76. Attorney And Client ⇨ 47.1

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Note 14

ORGANIZATION AND JURISDICTION OF THE COURTS

Materials related to disciplinary proceeding against attorney who pleaded guilty to misdemeanor sexual contact with minor victim would be sealed to extent that Superior Court that heard criminal case sealed materials to protect identity of victim, despite usual rule that disciplinary proceedings were open to public from time of filing of petition, given that job of disciplinary system was to assist public, and no member of public could be more important in that regard than victim of attorney's criminal conduct. In re Bewig, 2002, 791 A.2d 908. Attorney And Client ⇨ 47.1

Requirement that Hearing Committee must issue its report within 60 days following attorney disciplinary hearing is directory, rather than mandatory; courts cannot allow principal purpose of disciplinary rules, which is the protection of the public, to be thwarted solely because the Hearing Committee failed to issue its decision in timely fashion. In re Bernstein, 2001, 774 A.2d 309. Attorney And Client ⇨ 56

Unfortunate delay of well over a year between the conclusion of attorney disciplinary hearing and the issuance of the Hearing Committee report did not preclude imposition of disciplinary sanction against attorney; while rule requires Hearing Committee to issue report within 60 days, rule is directory, rather than mandatory. In re Bernstein, 2001, 774 A.2d 309. Attorney And Client ⇨ 56

In order to qualify for a reduced disciplinary sanction under the *Kersey* doctrine, an attorney is required to demonstrate: (1) by clear and convincing evidence that he had a disability; (2) by a preponderance of the evidence that the disability substantially affected his misconduct; and (3) by clear and convincing evidence that he has been substantially rehabilitated. In re Lopes, 2001, 770 A.2d 561. Attorney And Client ⇨ 59.5(5)

In order to qualify for a reduced disciplinary sanction under the *Kersey* doctrine, an attorney is required to show that his illnesses, however labeled, deprived him of the meaningful ability to comport himself in his professional conduct in accordance with the basic norms of professional responsibility. In re Lopes, 2001, 770 A.2d 561. Attorney And Client ⇨ 59.5(5)

Attorney established that he was qualified for a reduced disciplinary sanction, under the *Kersey* doctrine, for professional misconduct involving neglect and dishonesty; attorney's depression, together with fatigue and pain resulting from multiple sclerosis and reactions to medications, constituted a disability, attorney's infirmities substantially caused all of his misconduct, and attorney established that he was substantially rehabilitated. In re Lopes, 2001, 770 A.2d 561. Attorney And Client ⇨ 59.5(5)

An attorney can be sanctioned only for those disciplinary violations enumerated in formal charges. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ⇨ 52

In measuring consistency between attorney discipline cases, as step taken by the Court of Ap-

peals in determining whether to adopt Board on Professional Responsibility's recommended sanction, it is necessary to compare the gravity and frequency of the misconduct, any prior discipline, and any mitigating factors such as cooperation with Bar Counsel, remorse, illness or stress. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ⇨ 59.5(3)

Whether attorney's Maryland conviction for misdemeanor theft of \$18 constituted moral turpitude within meaning of statute requiring disbarment for offenses involving moral turpitude was a question of law committed to Court of Appeals. In re Spiridon, 2000, 755 A.2d 463, reinstatement denied 816 A.2d 809. Attorney And Client ⇨ 54

14.5. — Due process

Due process claims brought by attorney against District of Columbia Court of Appeals, bar association, and bar officials, stemming from bar disciplinary proceedings that resulted in attorney's suspension, were barred under doctrine of claim preclusion; appellate court had already held that District statute and bar rules expressly permitted suspension of attorney charged from practice pending disciplinary hearing. Richardson v. District of Columbia, 2010, 711 F.Supp.2d 115, affirmed and remanded in part 2012 WL 1155776. Judgment ⇨ 828.9(7); Judgment ⇨ 828.17(4)

Statute providing for automatic disbarment of attorney for conviction of an offense involving moral turpitude did not violate due process; attorney had notice of the disbarment proceedings, and he was able to present his position to the Board on Professional Responsibility and argue that his crimes did not involve moral turpitude. In re Krouner, 2007, 920 A.2d 1039. Attorney And Client ⇨ 1; Attorney And Client ⇨ 54; Constitutional Law ⇨ 4273(3)

Attorney was afforded procedural due process in disciplinary proceeding in New York that resulted in his disbarment, and thus he was subject to reciprocal discipline pursuant to rule governing such discipline in District of Columbia; attorney was given adequate notice of specific rule he allegedly violated in New York in prejudicing the administration of justice, as well as adequate notice of conduct underlying that alleged violation, and the opportunity to present his case. In re Edelstein, 2006, 892 A.2d 1153. Attorney And Client ⇨ 59.18; Constitutional Law ⇨ 4273(3)

Notwithstanding that bar discipline does not result in criminal conviction, an attorney who is the subject of such proceedings is entitled to procedural due process safeguards; the procedural requirements which apply in attorney disciplinary proceedings are analogous to those of other contested cases. In re Thyden, 2005, 877 A.2d 129. Attorney And Client ⇨ 47.1; Constitutional Law ⇨ 4273(3)

Notwithstanding that bar discipline does not result in a criminal conviction, an attorney who is the subject of disciplinary proceedings is entitled to procedural due process safeguards. In re Slat-

tery, 2001, 767 A.2d 203. Constitutional Law ☞ 4273(3)

The procedural due process requirements that apply in attorney disciplinary proceedings are analogous to those of other contested cases. In re Slattery, 2001, 767 A.2d 203. Constitutional Law ☞ 4273(3)

Attorney was not denied his right to due process in disciplinary proceeding, though one paragraph of specification of charges suggested discipline was sought due to attorney's committing theft by trick, and Bar Counsel allegedly argued theft by conversion and misappropriation in the evidentiary hearing; attorney was fairly put on notice of the charge against him, as specification did not explicitly mention theft by trick, but, rather, only mentioned theft. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ☞ 52; Constitutional Law ☞ 4273(3)

15.5. — Persons who may bring complaint

Complainant in attorney discipline case had sufficient basis to press complaint against attorney who misappropriated client funds, even though the complainant was the client's president, rather than the entity that actually had been the client; complainant had signed attorney's retainer agreement, had substantially financed the litigation in which attorney had represented client, and there was a common understanding that complainant would be reimbursed from the proceeds, if any, of that litigation. In re Mitrano, 2008, 952 A.2d 901, certiorari denied 129 S.Ct. 2064, 173 L.Ed.2d 1134. Attorney And Client ☞ 47.1

16. — Entitlement to hearing, practice and procedure

Attorney's guilty plea in New York to three crimes involving moral turpitude validly waived attorney's right to mitigation hearing in resulting disbarment proceeding in the District of Columbia; attorney had clear notice, from case law, that conviction for crimes of moral turpitude per se resulted in automatic disbarment and thus could not claim ignorance as to potential consequences of his conviction. In re Krouner, 2007, 920 A.2d 1039. Attorney And Client ☞ 54

Attorney did not waive his right to challenge recommendation of Board on Professional Responsibility that he be disbarred by failing to file timely objection to Board's stated intention to seek reciprocal discipline and by failing to participate in proceedings before Board, where sanction proposed by Board was greater than that imposed by original disciplining court. In re Demos, 2005, 875 A.2d 636. Attorney And Client ☞ 57

An attorney convicted of a misdemeanor is entitled to a hearing to consider the circumstances of the transgression, and thus to determine whether that crime, on its particular facts, involved moral turpitude, for purposes of attorney discipline. In re Tucker, 2000, 766 A.2d 510. Attorney And Client ☞ 54

Board on Professional Responsibility was required to hold hearing to determine whether attor-

ney's conduct which led to Maryland conviction for misdemeanor theft of \$18 involved moral turpitude under all facts and circumstances found at hearing. In re Spiridon, 2000, 755 A.2d 463, reinstatement denied 816 A.2d 809. Attorney And Client ☞ 54

16.5. — Evidence, practice and procedure

Court of Appeals had jurisdiction to determine whether attorney's appropriation of money from a fraternal organization's bank account was a criminal act that warranted discipline; a finding by clear and convincing evidence that the conduct at issue was a criminal act that merited a disciplinary sanction was altogether different than a finding beyond a reasonable doubt that the conduct merited conviction and a criminal penalty. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ☞ 39; Attorney And Client ☞ 53(2)

In attorney discipline cases, the burden of proving the charges rests with Bar Counsel and factual findings must be supported by clear and convincing evidence. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ☞ 53(2)

In case in which discipline was sought for attorney's committing theft, substantial evidence supported Board on Professional Responsibility's finding that attorney made an unauthorized use of money from a fraternal organization's bank account; other than attorney's unsworn representations, there was no evidence that he owned the funds, that he withdrew the funds for the benefit of the organization, that he ever made a contribution to the account, or that his father, a prior account signatory, ever asserted a claim to any portion of the funds, and bank statements addressed to attorney's home showing the name and tax identification number of the account provided attorney notice that ownership of the funds belonged to someone other than himself. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ☞ 53(2)

Substantial evidence supported Board on Professional Responsibility's finding, as grounds for discipline, that attorney was dishonest and deceitful based on his theft of fraternal organization's funds and the sworn testimony that he gave in a deposition following the lawsuit he filed against the national chapter of the organization; attorney had no instructions or authorization from the fraternal organization to withdraw the funds and place them in his account for personal use, and attorney's deposition answers regarding the status of the account were not merely equivocal, but misleading, false, and deceitful. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ☞ 53(2)

Substantial evidence supported Board on Professional Responsibility's finding that attorney knew alleged source of money for purposes of determining whether his conviction for conspiring to engage in monetary transaction in property believed to be derived from illegal drug trafficking was for crime of moral turpitude and, thus, warranted disbarment; attorney pled guilty to information which specifically asserted that he believed money to be derived from unlawful drug activity. In re Lee,

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2000, 755 A.2d 1034. Attorney And Client ⇨ 53(2)

18. Determination of penalty

Suspension from practice of law for six months was appropriate sanction following attorney's guilty plea to misdemeanor insurance fraud; facts did not indicate that crime was one of moral turpitude, and therefore, disbarment was not required. In re Wiss, 2008, 948 A.2d 1179. Attorney And Client ⇨ 59.13(5)

Thirty-day suspension, as opposed to public censure, was appropriate sanction for attorney who was convicted of misdemeanor sexual abuse and whose conducted violated rule providing that it is professional misconduct for an attorney to commit a criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness; despite attorney's lack of prior disciplinary history, the nature of his conduct, coupled with his questionable moral fitness, justified sanctions more serious than public censure, and as mitigating factors, attorney was on inactive status and appeared to no longer practice law and this behavior was aberrant and not likely to repeat itself. In re Harkins, 2006, 899 A.2d 755. Attorney And Client ⇨ 59.5(4); Attorney And Client ⇨ 59.5(5); Attorney And Client ⇨ 59.13(5)

Attorney's misconduct involving dishonesty and fraud warranted a suspension for six months, and a subsequent two-year period of probation was appropriate, rather than a requirement that he demonstrate fitness to practice; attorney was suspended for more than three years pending resolution of the case, and procedures for proving rehabilitation were time-consuming. In re Lopes, 2001, 770 A.2d 561. Attorney And Client ⇨ 59.13(3); Attorney And Client ⇨ 59.17(1)

In determining the appropriate sanction in attorney discipline cases, the Board on Professional Responsibility is to review all relevant factors, including: (1) the nature of the violation; (2) the mitigating and aggravating circumstances; (3) the need to protect the public, the courts and the legal profession; and (4) the moral fitness of the attorney. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ⇨ 59.5(1)

Attorney's theft of government property mandated disbarment as an offense involving moral turpitude, even if his other offense, concealment of a material fact, was not a crime of moral turpitude. In re Dowdey, 2004, 861 A.2d 602. Attorney And Client ⇨ 39; Attorney And Client ⇨ 59.14(6)

19. Review

Attorney who pled guilty to misdemeanor theft of property would be suspended for one year, with restitution required as a condition of reinstatement, where when attorney committed the thefts he was tasked with leading the White House re-

sponse to a hurricane of immense proportions, attorney had been subjected to extreme stress and his conduct did not involve moral turpitude, attorney had a clean disciplinary record, attorney expressed remorse for his conduct, and attorney had been successfully readmitted to the Bars of two other states in which he was licensed. In re Allen, 2011, 27 A.3d 1178. Attorney and Client ⇨ 59.13(5)

A recommendation of the Board on Professional Responsibility with respect to a proposed sanction comes to the Court of Appeals with a strong presumption in favor of its imposition. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ⇨ 57

Generally speaking, if the Board on Professional Responsibility's recommended sanction falls within a wide range of acceptable outcomes, it will be adopted and imposed. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ⇨ 57

Comparing one attorney discipline case to another is an inherently imprecise process, and the Board on Professional Responsibility's expertise in disciplinary matters is entitled to considerable deference when the Court of Appeals decides whether to adopt the Board's proposed sanction. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ⇨ 57

Although the Board on Professional Responsibility exercises broad discretion in handing out attorney discipline, and its decision is subject only to a general review for abuse of that discretion, the Court of Appeals retains the ultimate choice of sanction. In re Slattery, 2001, 767 A.2d 203. Attorney And Client ⇨ 57

The Court of Appeals reviews de novo any Board on Professional Responsibility determination of moral turpitude, since the ultimate issue of moral turpitude is one of law rather than of fact. In re Tucker, 2000, 766 A.2d 510. Attorney And Client ⇨ 57

If the crime at issue in an attorney disciplinary case is a misdemeanor, the Court of Appeals must look beyond its statutory definition to the underlying facts; the Court of Appeals cannot find moral turpitude merely by reference to the elements of the criminal statute. In re Tucker, 2000, 766 A.2d 510. Attorney And Client ⇨ 39

In general, when Court of Appeals reviews recommendations of Board on Professional Responsibility, Court accepts Board's findings of facts if supported by substantial evidence, and adopts recommended sanction for attorney misconduct unless to do so would foster inconsistent dispositions or otherwise be unwarranted. In re Spiridon, 2000, 755 A.2d 463, reinstatement denied 816 A.2d 809. Attorney And Client ⇨ 57

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§ 11-2504. Censure, suspension, or disbarment by other courts.

Notes of Decisions

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Amended rules 3

Reciprocal discipline 2**1. In general**

Attorney's actions in counseling his clients and drafting pleadings while under suspension by United States District Court for the District of Columbia amounted to unauthorized practice of law, in violation of rules of professional conduct, where at time of such conduct, attorney had been suspended from practice in every jurisdiction in which he had been admitted. *In re Schoeneman*, 2006, 891 A.2d 279. Attorney And Client ⇨ 37.1

Attorney's misconduct in Oklahoma warranted public censure and five-year suspension from practice of law, with fitness requirement for reinstatement, where attorney resigned from practice of law in Oklahoma, conduct alleged in Oklahoma proceedings would not have resulted in disbarment in the District of Columbia, and attorney alleged circumstances in Oklahoma proceedings constituting mitigating circumstance of mental infirmity. *In re Angel*, 2005, 889 A.2d 993. Attorney And Client ⇨ 59.18

Consenting to indefinite suspension in another jurisdiction warranted indefinite suspension in District of Columbia, with right to apply for reinstatement after being reinstated in other jurisdiction or after five years, whichever occurred first. *In re Harris-Smith*, 2001, 772 A.2d 804. Attorney And Client ⇨ 59.18; Attorney And Client ⇨ 61

2. Reciprocal discipline

Presumption in favor of identical reciprocal discipline was not rebutted, and thus, reprimand was warranted for attorney's misconduct in failing to advise client of possible ineffective assistance resulting from attorney's untimely appeal of denial of application for political asylum; record did not demonstrate that attorney's conduct resulted in substantial prejudice to client, which was the ground cited by the Board on Professional Responsibility for its recommendation of discipline substantially different from and more severe than the Massachusetts Order of Public Reprimand. *In re*

Fitzgerald, 2009, 982 A.2d 743. Attorney And Client ⇨ 59.18

In reciprocal attorney disciplinary proceeding in District of Columbia after attorney's disbarment in Maryland, presumption in favor of identical reciprocal discipline was overcome, on the ground that the established misconduct warranted substantially different discipline in the District of Columbia, with respect to misconduct of associate attorney who falsely represented to other attorneys at law firm that he had filed an appeal in a client's case and who created falsified filing stamps on papers to make it appear that those papers had been filed in court, after attorney had failed to convey to client the law firm's offer to represent the client in the appeal for a reduced fee, which offer the law firm intended as a response to client's indication that he did not want to appeal because he did not want to incur additional fees and expenses; in prior disciplinary cases in District of Columbia involving dishonesty, attorneys had received suspensions for periods ranging from 30 days to three years, which range of sanctions was substantially different from disbarment. *In re Guberman*, 2009, 978 A.2d 200. Attorney And Client ⇨ 59.18

3. Amended rules

Although Court of Appeals in attorney disciplinary proceeding would follow old rule regarding reciprocal disciplinary proceedings that allowed for reciprocal discipline in cases where an attorney was censured or reprimanded by another court, which rule was in effect at time attorney was disciplined by Supreme Judicial Court of Massachusetts but which was subsequently amended while reciprocal disciplinary proceeding was pending, Court of Appeals would treat the result that would have ensued under application of the amended rule, publication of the Massachusetts order of public reprimand, as a factor that weighed at least somewhat in favor of identical reciprocal discipline and weighed against imposition of a suspensory sanction. *In re Fitzgerald*, 2009, 982 A.2d 743. Attorney And Client ⇨ 59.18

Chapter 26**Representation of Indigents in Criminal Cases.****Section**

11-2601. Plan for furnishing representation of indigents in criminal cases.

11-2602. Appointment of counsel.

Section

11-2603. Duration and substitution of appointments.

11-2604. Payment for representation.

11-2605. Services other than counsel.

§ 11-2601. Plan for furnishing representation of indigents in criminal cases.

Notes of Decisions

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5. Entitlement to counsel—In general

If the prisoner's post-conviction claim is sufficient for a hearing, it presumably will be colorable enough to warrant appointment of counsel. *Wu v. U.S.*, 2002, 798 A.2d 1083. Criminal Law ⇨ 1602; Criminal Law ⇨ 1652

11. Attorney Fees

Attorney's submission of a false Criminal Justice Act voucher for attorney fees for work that she allegedly failed to perform for indigent client constituted the charging of an unreasonable fee in violation of the rules of professional conduct. In *re Cleaver-Bascombe*, 2006, 892 A.2d 396. Attorney And Client ⇨ 42

Attorney violated rule of professional conduct regarding the making of false statements of fact or law to a tribunal when she submitted a Criminal Justice Act voucher for payment of attorney fees for work that she performed for indigent client that she knew contained charges for work that was not performed. In *re Cleaver-Bascombe*, 2006, 892 A.2d 396. Attorney And Client ⇨ 42

An attorney, who deliberately and knowingly makes a false representation in her Criminal Justice Act (CJA) voucher for attorney fees or who recklessly maintains inadequate time records, and consciously disregards the risk that she may overcharge a client or the CJA fund, engages in dishonesty within the meaning of rule of professional conduct regarding engaging in activity involving dishonesty. In *re Cleaver-Bascombe*, 2006, 892 A.2d 396. Attorney And Client ⇨ 42

The Criminal Justice Act program, regarding the appointment of counsel for indigent clients, is a part of the judicial process for purposes of this rule of professional conduct regarding the prohibition against conduct that seriously interferes with the administration of justice. In *re Cleaver-Bascombe*, 2006, 892 A.2d 396. Attorney And Client ⇨ 42

Whether attorney acted with intent to defraud or recklessly, the consequences for the judicial process of the submission of a false Criminal Justice Act voucher for payment of attorney fees for work that she performed for indigent client were more than minimal, and thus, attorney's conduct violated rule of professional conduct that prohibited conduct that seriously interfered with the administration of justice. In *re Cleaver-Bascombe*, 2006, 892 A.2d 396. Attorney And Client ⇨ 42

Remand was necessary in attorney discipline case due to the Court of Appeals inability to reconcile satisfactorily the Board of Professional Responsibility's conclusion that attorney submitted a patently fraudulent voucher for attorney fees under the Criminal Justice Act with the Board's position that the hearing committee's findings did not support the conclusion that attorney presented false evidence or testimony; there would be a significant difference, for purposes of an appropriate sanction, between an attorney's deliberate fabrication of a claim and perjurious defense of it before the hearing committee and, on the other hand, her engaging, without an intent to defraud, in record-keeping so shoddy that it was the legal equivalent of dishonesty, but then presenting a legitimate defense without fabrication or perjury. In *re Cleaver-Bascombe*, 2006, 892 A.2d 396. Attorney And Client ⇨ 57

§ 11-2602. Appointment of counsel.

United States Supreme Court

Attachment of right,Charged vs. uncharged offenses,

Right to appointed counsel applicable to charged offenses and to uncharged offenses considered to be the same offense as a charged offense but not to uncharged offenses merely factually related to a charged offense, police officer interrogation, admissibility of confession, see *Texas v. Cobb*, U.S.Tex.2001, 121 S.Ct. 1335, 532 U.S. 162, 149 L.Ed.2d 321, on remand 85 S.W.3d 258, rehearing denied.

Indigents' right to counsel,Appeals,

Due process and equal protection, counsel, indigent defendants, plea of guilty or nolo

contendere, right to appointed counsel on discretionary first tier review, see *Halbert v. Michigan*, 2005, 125 S.Ct. 2582.

Standing, attorneys, denial of appellate counsel to indigents pleading guilty or nolo contendere, see *Kowalski v. Tesmer*, 2004, 125 S.Ct. 564.

Habeas corpus,

Post-custody challenges to enhancement of sentence by unconstitutional prior conviction disallowed, exception for failure to appoint counsel, habeas corpus, see *Lackawanna County Dist. Attorney v. Coss*, 2001, 121 S.Ct. 1567, 532 U.S. 394, 176 A.L.R. Fed. 711, 149 L.Ed.2d 608.

Notes of Decisions

1. In general

Defendant's appellate counsel, who had been appointed under District of Columbia Criminal Justice Act, had statutory obligation to perfect appeal from denial of defendant's second motion for post-conviction relief, which was based on alleged ineffective assistance of defendant's trial counsel, if defendant made timely request for her to do so, where defendant's direct appeal was pending when appellate counsel filed second motion for post-conviction relief. U.S.C.A. Const. Amend. 6; D.C. Official Code, 2001 Ed. §§§§11-2602, 11-2603, *Pearsall v. U.S.*, 2004, 859 A.2d 634. Criminal Law ⇨ 1967

The appointment of counsel provided for under statute for the purpose of pursuing collateral relief is a matter within the sound discretion of the trial court. *Wu v. U.S.*, 2002, 798 A.2d 1083. Criminal Law ⇨ 1602

3. Eligibility

A prisoner's request for the appointment of counsel to pursue collateral relief is to be considered under an interests of justice standard. *Wu v. U.S.*, 2002, 798 A.2d 1083. Criminal Law ⇨ 1602

4. Constitutional necessity of appointment

Generally, there is no constitutional or statutory right to the appointment of counsel to pursue collateral relief after the direct appeal. *Wu v. U.S.*, 2002, 798 A.2d 1083. Criminal Law ⇨ 1602

The appointment of counsel is not required for a prisoner's post-conviction motion that is vague and conclusory or is palpably incredible and fails to state a claim, i.e., the assertions, even if true, would not entitle the prisoner to relief. *Wu v. U.S.*, 2002, 798 A.2d 1083. Criminal Law ⇨ 1602

§ 11-2603. Duration and substitution of appointments.

United States Supreme Court

Charged vs. uncharged offenses.

Right to appointed counsel applicable to charged offenses and to uncharged offenses considered to be the same offense as a charged offense but not to uncharged offenses merely factually related to a

charged offense, police officer interrogation, admissibility of confession, see *Texas v. Cobb*, U.S.Tex.2001, 121 S.Ct. 1335, 532 U.S. 162, 149 L.Ed.2d 321, on remand 85 S.W.3d 258, rehearing denied.

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1. In general

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Defendant who was convicted of rape while armed had a right under the Criminal Justice Act (CJA) to have appointed counsel advise him of his rights under the rule governing motions to reduce sentence and to file a timely nonfrivolous motion to reduce sentence if requested to do so. *U.S. v. Bolanos a.k.a. Gomez*, 136 WLR 2401 (Super. Ct. 2008).

2. Effectiveness of counsel

Appellate counsel's statutory obligation to represent defendant through appeals, including ancillary matters appropriate to proceeding, included duty to pursue and file, during pendency of direct appeal, a postconviction motion requesting hearing on claim of ineffective assistance of trial counsel. *McCrimmon v. U.S.*, 2004, 853 A.2d 154. Criminal Law ⇨ 1602

Defense counsel's failure to call DNA expert, and decision to rely on government expert was reasonable trial strategy, in prosecution for child sexual abuse, and thus could not constitute ineffective assistance. *Sanchez-Rengifo v. U.S.*, 2002, 815 A.2d 351. Criminal Law ⇨ 1931

Counsel appointed under the Criminal Justice Act to handle murder defendant's direct appeal had a statutory duty to perfect appeal of the denial of motion for postconviction relief alleging ineffectiveness of trial counsel, which appointed counsel filed during the pendency of the direct appeal. *Williams v. U.S.*, 2001, 783 A.2d 598. Criminal Law ⇨ 1967

The *Shepard* procedure, pursuant to which counsel appointed on defendant's direct appeal has an obligation to file motion for postconviction relief alleging ineffectiveness of trial counsel, applies only when the defendant, during the pendency of his direct appeal, demonstrably knew or should have known of the grounds for alleging his trial attorney's ineffectiveness. *Williams v. U.S.*, 2001, 783 A.2d 598. Criminal Law ⇨ 1971

In case in which counsel was appointed under the Criminal Justice Act to handle murder defendant's direct appeal, remedy for appointed counsel's failure to perfect appeal of the denial of motion for postconviction relief would be to re-enter judgment so that an appeal from that order could be noted in the required manner, where appointed counsel filed postconviction relief motion during pendency of direct appeal to raise claim of

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Note 2

ineffectiveness of trial counsel. *Williams v. U.S.*, 2001, 783 A.2d 598. Criminal Law ⇨ 1661

3. Choice of counsel

Defendant's constitutionally protected right to choose his own counsel is not absolute, and cannot be insisted upon in a manner that will obstruct an orderly procedure in courts of justice, and deprive such courts of exercise of their inherent powers to control the same. *Yancey v. U.S.*, 2000, 755 A.2d 421. Criminal Law ⇨ 1820

Defendant's constitutionally protected right to choose his own counsel may be balanced against other factors by trial court to prevent administration of justice from being impeded. *Yancey v. U.S.*, 2000, 755 A.2d 421. Criminal Law ⇨ 1820

Trial court did not violate defendant's right to choose his own counsel by ruling that defendant go to trial with an attorney who appeared to be of his own choosing, despite claim that attorney merely entered an appearance to obtain continuance for defendant's first attorney who had been suspended from practice of law for three months. *Yancey v. U.S.*, 2000, 755 A.2d 421. Criminal Law ⇨ 1823

ORGANIZATION AND JURISDICTION OF THE COURTS

7. Review

When a convicted defendant entitled to representation under the Criminal Justice Act appeals his conviction, and while the direct appeal is pending appointed counsel files a motion for postconviction relief, counsel has the statutory duty to take the steps necessary to effect an appeal requested by the defendant from the denial of that motion, and failure to fulfill this duty requires that the order of denial be vacated and re-entered so that an appeal may be properly noted; overruling *Lee v. United States*, 597 A.2d 1333. *Williams v. U.S.*, 2001, 783 A.2d 598. Criminal Law ⇨ 1181.5(3.1); Criminal Law ⇨ 1967; Criminal Law ⇨ 1971

Consolidation of direct appeal with appeal of denial of postconviction relief is not required, and if appellate counsel believes that he has a meritorious issue in the direct appeal, he may request that the appeals not be consolidated and resolution of the direct appeal not be deferred, thus avoiding whatever additional delay the postconviction relief proceedings might add to the combined appeals. *Williams v. U.S.*, 2001, 783 A.2d 598. Criminal Law ⇨ 1132

§ 11-2604. Payment for representation.

(a) Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be compensated at a fixed rate of \$90 per hour. Such attorney shall be reimbursed for expenses reasonably incurred.

(b) The compensation to be paid to an attorney appointed pursuant to this chapter shall not exceed the following maximum amounts:

(1) For representation of a defendant before the Superior Court of the District of Columbia for misdemeanors or felonies, the maximum amount set forth in section 3006A(d)(2) of title 18, United States Code, for representation of a defendant before the United States magistrate judge or the district court for misdemeanors or felonies (as the case may be).

(2) For representation of a defendant before the District of Columbia Court of Appeals, the maximum amount set forth in section 3006A(d)(2) of title 18, United States Code, for representation of a defendant in an appellate court.

(3) For representation of a defendant in post-trial matters for misdemeanors or felonies, the amount applicable under paragraph (1) for misdemeanors or felonies (as the case may be).

(c) Claims for compensation and reimbursement in excess of any maximum amount provided in subsection (b) of this section may be approved for extended or complex representation whenever such payment is necessary to provide fair compensation. Any such request for payment shall be submitted by the attorney for approval by the chief judge of the Superior Court upon recommendation of the presiding judge in the case or, in cases before the District of Columbia Court of Appeals, approval by the chief judge of the Court of Appeals upon recommendation of the presiding judge in the case. A decision shall be made by the appropriate chief judge in the case of every claim filed under this subsection.

(d) A separate claim for compensation and reimbursement shall be made to the Superior Court for representation before that court, and to the District of Columbia Court of Appeals for representation before that court. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished other than before the Superior Court or the District of Columbia Court of Appeals, claims shall be

submitted to the Superior Court which shall fix the compensation and reimbursement to be paid.

(e) For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(f) If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, such person may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28, United States Code.

(Sept. 3, 1974, 88 Stat. 1091, Pub. L. 93-412, § 2; Jan. 31, 1984, D.C. Law 5-44, § 2, 30 DCR 5411; Aug. 6, 1993, D.C. Law 10-11, § 201, 40 DCR 4007; Sept. 30, 1993, D.C. Law 10-25, § 201, 40 DCR 5489; June 13, 1994, Pub. L. 103-266, § 1(b)(121), 108 Stat. 713; Sept. 26, 1995, D.C. Law 11-52, § 805, 42 DCR 3684; Dec. 21, 2001, 115 Stat. 928, Pub. L. 107-96, par. 20(a)(1), (c); Jan. 10, 2002, 115 Stat. 2307, Pub. L. 107-117, § 404; Oct. 2, 2008, 122 Stat. 3724, Pub. L. 110-335, § 1; Mar. 11, 2009, 123 Stat. 700, Pub. L. 111-8, § 822(a).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 107-96 substituted “\$65” for “\$50” in subsec. (a); and, in subsec. (b), substituted “\$1900” for “\$1300” twice, and substituted “\$3600” for “\$2450” twice.

Pub. L. 107-117 made a nonsubstantive change.

Pub. L. 110-335, in subsec. (a), substituted “\$80 per hour” for “\$65 per hour”; and rewrote subsec. (b), which had read as follows:

“(b) For representation of a defendant before the Superior Court or before the District of Columbia Court of Appeals, as the case may be, the compensation to be paid to an attorney shall not exceed the following maximum amounts:

“(1) \$1900 for misdemeanor cases;

“(2) \$3600 for felony cases; and

“(3) \$1900 for post-trial matters if the underlying case was a misdemeanor or \$3600 for post-trial matters if the underlying case was a felony.”

Pub. L. 111-8, in subsec. (a), substituted “\$90 per hour” for “\$80 per hour”.

Effective Dates

Pub. L. 107-96, 115 Stat. 929, the District of Columbia Appropriations Act, 2002, provides in part:

“The amendments made by this provision shall apply with respect to cases and proceedings initiated on or after March 1, 2002.”

Section 2 of Pub. L. 110-335 provides:

“The amendments made by this Act shall apply with respect to cases and proceedings initiated on or after the date of the enactment of this Act.”

Section 822(c) of Pub. L. 111-8 provides:

“The amendments made by this section shall apply with respect to cases and proceedings initiated on or after the date of enactment of this Act.”

Miscellaneous Notes

Prompt Payment of Appointed Counsel. Section 129 of Pub. L. 107-96, Dec. 21, 2001, 115 Stat. 923, provides:

“(a) ASSESSMENT OF INTEREST FOR DELAYED PAYMENTS — If the Superior Court of the District of Columbia or the District of Colum-

bia Court of Appeals does not make a payment described in subsection (b) prior to the expiration of the 45-day period which begins on the date the Court receives a completed voucher for a claim for the payment, interest shall be assessed against the amount of the payment which would otherwise be made to take into account the period which begins on the day after the expiration of such 45-day period and which ends on the day the Court makes the payment.

“(b) PAYMENTS DESCRIBED. — A payment described in this subsection is —

“(1) a payment authorized under section 11-2604 and section 11-2605, D.C. Code (relating to representation provided under the District of Columbia Criminal Justice Act);

“(2) a payment for counsel appointed in proceedings in the Family Division of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Code; or

“(3) a payment for counsel authorized under section 21-2060, D.C. Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986).

“(c) STANDARDS FOR SUBMISSION OF COMPLETED VOUCHERS.—The chief judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals shall establish standards and criteria for determining whether vouchers submitted for claims for payments described in subsection (b) are complete, and shall publish and make such standards and criteria available to attorneys who practice before such Courts.

“(d) RULE OF CONSTRUCTION. — Nothing in this section shall be construed to require the assessment of interest against any claim (or portion of any claim) which is denied by the Court involved.

“(e) EFFECTIVE DATE. — This section shall apply with respect to claims received by the Superior Court of the District of Columbia or the District of Columbia Court of Appeals during fiscal year 2002, and claims received previously that

remain unpaid at the end of fiscal year 2001, and would have qualified for interest payment under this section.”

Prompt Payment of Appointed Counsel. Section 128 of Pub. L. 108-7, Feb. 20, 2003, 117 Stat. 127, provides:

“(a) If the Superior Court of the District of Columbia or the District of Columbia Court of Appeals does not make a payment described in subsection (b) prior to the expiration of the 45-day period which begins on the date the Court receives a completed voucher for a claim for the payment, interest shall be assessed against the amount of the payment which would otherwise be made to take into account the period which begins on the day after the expiration of such 45-day period and which ends on the day the Court makes the payment.

“(b) A payment described in this subsection is—

“(1) a payment authorized under section 11-2604 and section 11-2605, D.C. Official Code (relating to representation provided under the District of Columbia Criminal Justice Act);

“(2) a payment for counsel appointed in proceedings in the Family Court of the Superior Court of

the District of Columbia under chapter 23 of title 16, D.C. Official Code; or

“(3) a payment for counsel authorized under section 21-2060, D.C. Official Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986).

“(c) The chief judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals shall establish standards and criteria for determining whether vouchers submitted for claims for payments described in subsection (b) are complete, and shall publish and make such standards and criteria available to attorneys who practice before such Courts.

“(d) Nothing in this section shall be construed to require the assessment of interest against any claim (or portion of any claim) which is denied by the Court involved.

“(e) This section shall apply with respect to claims received by the Superior Court of the District of Columbia or the District of Columbia Court of Appeals during fiscal year 2003 and any subsequent fiscal year.”

Notes of Decisions

Construction and application 2

1. In general

Suit by lawyers and investigator against District of Columbia courts under Prompt Pay Act (PPA), seeking interest on fees for services rendered to indigent criminal defendants under District of Columbia Criminal Justice Act, invoked federal question jurisdiction; PPA was not exclusively applicable to District of Columbia, since it applied to all federal agencies, Tennessee Valley Authority, and United States Postal Service, in addition to District of Columbia courts. *Roth v. District of Columbia Courts*, 2001, 160 F.Supp.2d 104. Federal Courts ⇐ 192

District court declined to exercise discretion to entertain suit by lawyers and investigator who provided services to indigent criminal defendants under District of Columbia Criminal Justice Act, against District of Columbia courts, seeking declaration that courts' method for determining when

interest began to accrue on unpaid fees violated Prompt Pay Act (PPA); PPA precluded claim for monetary relief, which lawyers and investigator were required to pursue through administrative contracts dispute resolution process, and thus court's retention of declaratory judgment action would have resulted in piecemeal litigation. *Roth v. District of Columbia Courts*, 2001, 160 F.Supp.2d 104. Declaratory Judgment ⇐ 82

2. Construction and application

Provision of District of Columbia Appropriations Act imposing limits on fees the District could pay under Individuals with Disabilities Education Act (IDEA) to attorneys for prevailing parties did not apply to attorney fees sought by parent who had prevailed at administrative hearing on IDEA complaint against charter school; although a portion of charter school budget came from District of Columbia funds, the cap applied only to District schools. *Brown v. Barbara Jordan P.C.S.*, 2008, 539 F.Supp.2d 436. Schools ⇐ 155.5(5)

§ 11-2605. Services other than counsel.

(a) Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

(b) Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services, excluding the preparation of reporter's transcript, without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed \$375 or the rate provided by section 3006A(e)(2) of title 18, United States Code, (or, in the case of investigative services, a fixed rate of \$25 per hour) whichever is higher, and expenses reasonably incurred.

(c) Compensation to be paid to a person for services rendered by such person to a person under this subsection shall not exceed \$750, or the rate provided by section 3006A(e)(3) of title 18, United States Code, (or, in the case of investigative services, a fixed rate of \$25 per hour) whichever is higher, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the presiding judge in the case.

(Sept. 3, 1974, 88 Stat. 1092, Pub. L. 93-412, § 2; Jan. 31, 1984, D.C. Law 5-44, § 3, 30 DCR 5411; June 13, 1994, Pub. L. 103-266, § 1(b)(122), 108 Stat. 713; Dec. 21, 2001, 115 Stat. 929, Pub. L. 107-96; Oct. 16, 2006, 120 Stat. 2024, Pub. L. 109-356, § 113(a).)

Historical and Statutory Notes

Effect of Amendments

Pub. L. 107-96 inserted a new subsec. (b) providing a fixed rate of compensation; and redesignated former subsecs. (b) and (c) as subsecs. (c) and (d).

Pub. L. 109-356 repealed former subsec. (b); redesignated former subsecs. (c) and (d) as subsecs. (b) and (c); and, in subsecs. (b) and (c), inserted "(or, in the case of investigative services, a fixed rate of \$25 per hour)". Prior to amendment, subsec. (b) read as follows:

"(b) Subject to the applicable limits described in subsections (c) and (d), an individual providing services under this section shall be compensated at a fixed rate of \$25 per hour, and shall be reimbursed for expenses reasonably incurred."

Effective Dates

Pub. L. 107-96, 115 Stat. 923, the District of Columbia Appropriations Act, 2002, provides in part:

"The amendments made by this provision shall apply with respect to cases and proceedings initiated on or after March 1, 2002."

Section 113(b) of Pub. L. 109-356 provides that the amendment made by subsection (a) shall apply with respect to pay periods beginning on or after the date of the enactment of this Act [October 16, 2006].

Miscellaneous Notes

Prompt Payment of Appointed Counsel. Section 129 of Pub. L. 107-96, Dec. 21, 2001, 115 Stat. 929, provides:

"(a) **ASSESSMENT OF INTEREST FOR DELAYED PAYMENTS** — If the Superior Court of the District of Columbia or the District of Columbia Court of Appeals does not make a payment described in subsection (b) prior to the expiration of the 45-day period which begins on the date the Court receives a completed voucher for a claim for the payment, interest shall be assessed against the amount of the payment which would otherwise be made to take into account the period which begins on the day after the expiration of such 45-day period and which ends on the day the Court makes the payment.

"(b) **PAYMENTS DESCRIBED.** — A payment described in this subsection is —

"(1) a payment authorized under section 11-2604 and section 11-2605, D.C. Code (relating to repre-

sentation provided under the District of Columbia Criminal Justice Act);

"(2) a payment for counsel appointed in proceedings in the Family Division of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Code; or

"(3) a payment for counsel authorized under section 21-2060, D.C. Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986).

"(c) **STANDARDS FOR SUBMISSION OF COMPLETED VOUCHERS.** — The chief judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals shall establish standards and criteria for determining whether vouchers submitted for claims for payments described in subsection (b) are complete, and shall publish and make such standards and criteria available to attorneys who practice before such Courts.

"(d) **RULE OF CONSTRUCTION.** — Nothing in this section shall be construed to require the assessment of interest against any claim (or portion of any claim) which is denied by the Court involved.

"(e) **EFFECTIVE DATE.** — This section shall apply with respect to claims received by the Superior Court of the District of Columbia or the District of Columbia Court of Appeals during fiscal year 2002, and claims received previously that remain unpaid at the end of fiscal year 2001, and would have qualified for interest payment under this section."

Prompt Payment of Appointed Counsel. Section 128 of Pub. L. 108-7, Feb. 24, 2003, 117 Stat. 11, provides:

"(a) If the Superior Court of the District of Columbia or the District of Columbia Court of Appeals does not make a payment described in subsection (b) prior to the expiration of the 45-day period which begins on the date the Court receives a completed voucher for a claim for the payment, interest shall be assessed against the amount of the payment which would otherwise be made to take into account the period which begins on the day after the expiration of such 45-day period and which ends on the day the Court makes the payment.

"(b) A payment described in this subsection is—

"(1) a payment authorized under section 11-2604 and section 11-2605, D.C. Official Code (relating to representation provided under the District of Columbia Criminal Justice Act);

"(2) a payment for counsel appointed in proceedings in the Family Court of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Official Code; or

"(3) a payment for counsel authorized under section 21-2060, D.C. Official Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986).

"(c) The chief judges of the Superior Court of the District of Columbia and the District of Colum-

bia Court of Appeals shall establish standards and criteria for determining whether vouchers submitted for claims for payments described in subsection (b) are complete, and shall publish and make such standards and criteria available to attorneys who practice before such Courts.

"(d) Nothing in this section shall be construed to require the assessment of interest against any claim (or portion of any claim) which is denied by the Court involved.

"(e) This section shall apply with respect to claims received by the Superior Court of the District of Columbia or the District of Columbia Court of Appeals during fiscal year 2003 and any subsequent fiscal year."

Notes of Decisions

Medical expert witnesses 2.5

1. In general

Criminal defendant is entitled to the services of an expert, if he is financially unable to obtain the expert's services and the services are necessary to an adequate defense. *Porter v. U.S.*, 2001, 769 A.2d 143. Costs ⇨ 302.2(2)

Decision to authorize defense counsel to obtain an expert is entrusted to the sound discretion of the trial court. *Porter v. U.S.*, 2001, 769 A.2d 143. Costs ⇨ 302.2(2)

Trial court must provide a defendant with expert services whenever there has been a showing that the accused is financially unable to obtain the service and the service is necessary to an adequate defense. *Jackson v. U.S.*, 2001, 768 A.2d 580, opinion after remand 839 A.2d 681. Costs ⇨ 302.2(2)

In considering indigent defendant's request for expert services, the trial court should tend to rely on the judgment of defense counsel who has the primary duty of providing an adequate defense, although the court does not act as a rubber stamp. *Jackson v. U.S.*, 2001, 768 A.2d 580, opinion after remand 839 A.2d 681. Costs ⇨ 302.2(2)

Indigent defendant's request for expert services must be evaluated on a standard of reasonableness, focusing on whether a reasonable attorney would pursue such services in aid of a defense, but recognizing that the state need not purchase for the indigent defendant all the assistance that his wealthier counterpart might buy. *Jackson v. U.S.*, 2001, 768 A.2d 580, opinion after remand 839 A.2d 681. Costs ⇨ 302.2(2)

Indigent defendant was not entitled to services of fingerprint expert at public expense to challenge

failure of police to attempt to obtain fingerprint from plastic bag containing cocaine; defendant had alternative means to present that issue to jury, and that evidence likely would not have appreciably assisted jury in resolving issue of guilt. *Jackson v. U.S.*, 2001, 768 A.2d 580, opinion after remand 839 A.2d 681. Costs ⇨ 302.2(2)

2.5. Medical expert witnesses

Trial court did not abuse its discretion in denying rape defendant's request for funds to consult with expert witness, where defendant failed adequately to address court's reasonable concern that intended expert, a state's chief medical examiner, did not qualify as expert in detection of sperm in living rape victims. *Porter v. U.S.*, 2001, 769 A.2d 143. Costs ⇨ 302.4

5. Review and remand

Any error in trial court's denial of rape defendant's request for funds to consult with expert witness was harmless, where court's concern that particular expert with whom defendant sought to consult was not qualified to testify would have led it to reserve right to disallow expert's testimony at trial, and where other evidence against defendant was overwhelming. *Porter v. U.S.*, 2001, 769 A.2d 143. Criminal Law ⇨ 1177.6

Error was harmless with respect to exclusion of expert testimony that police might have been able to obtain fingerprint sample from plastic bag containing cocaine had they tried to do so; defendant had other means to raise the issue of officers' failure to attempt to obtain fingerprint sample, and that defense had a serious problem of plausibility in light of other evidence. *Jackson v. U.S.*, 2001, 768 A.2d 580, opinion after remand 839 A.2d 681. Criminal Law ⇨ 1170(1)

TITLE 12

RIGHT TO REMEDY.

Chapter	Section
1. Abatement and Revivor.	12-101
3. Limitation of Actions.	12-301

Chapter 1

Abatement and Revivor.

Section
12-101. Survival of rights of action.

§ 12-101. Survival of rights of action.

Historical and Statutory Notes

Miscellaneous Notes

Section 24 of D.C. Law 15-354 provides that Title 12 is designated Title 12 of the District of Columbia Official Code.

Notes of Decisions

Law governing 2.5
Summary judgment 13.5

2. In general

Under law of District of Columbia, a “survival action” is a negligence action pursued by estate of decedent victim and all that need be proven are ordinary elements of negligence, but a “wrongful death action” is an action pursued by a survivor in his capacity as a victim himself, requiring proof of both the underlying negligence action as well as injury to the survivor. *Burton v. U.S.*, 2009, 668 F.Supp.2d 86, appeal dismissed 2010 WL 1633172. Death ⇨ 7; Death ⇨ 10

District of Columbia statute allowing a person representing a decedent’s estate to assert tort claims belonging to the deceased victim that would have been precluded at common law does not create a distinct, substantive cause of action. *Powers-Bunce v. District of Columbia*, 2007, 479 F.Supp.2d 146. Death ⇨ 10; Death ⇨ 11

Under District of Columbia law, survival statute is the exclusive means by which an estate may recover for common law torts resulting in the decedent’s death. *Henson v. W.H.H. Trice and Co.*, 2006, 466 F.Supp.2d 187. Death ⇨ 10

2.5. Law governing

Under District of Columbia choice of law principles, the law of District of Columbia, rather than Israeli law, governed intentional infliction of emo-

tional distress and survival claims brought against the Islamic Republic of Iran and the Iranian Ministry of Information and Security arising from death of U.S. citizen, who was abducted and executed by members of terrorist group while residing in Israel; although all the plaintiffs resided in Israel at the time of the abduction and execution, the United States’ interest in guaranteeing redress to U.S. citizens was paramount. *Wachsman ex rel. Wachsman v. Islamic Republic of Iran*, 2008, 537 F.Supp.2d 85. Death ⇨ 8

5. Causes of action which survive

Under District of Columbia law, common law tort claims did not survive decedent’s death, and thus were to be merged with statutory survival claims. *Henson v. W.H.H. Trice and Co.*, 2006, 466 F.Supp.2d 187. Death ⇨ 10

Under District of Columbia law, plaintiff had standing to bring survival claims on behalf of estate and wrongful death claims on behalf of decedent’s next of kin solely in her capacity as personal representative of estate of decedent, not individually, as mother of decedent, or as next friend of decedent’s siblings. *Henson v. W.H.H. Trice and Co.*, 2006, 466 F.Supp.2d 187. Death ⇨ 31(3.1)

9. — Tolling, limitations

Personal representative of shooting victim was collaterally estopped, under District of Columbia law, from arguing that Chinese gun manufacturer

§ 12-101

Note 9

was equitably estopped from asserting statute of limitations defense in wrongful death action and from challenging dismissal without prejudice of representative's prior claim; representative's argument, that his failure to effect service on manufacturer should have been excused as manufacturer's fault, was fully and fairly litigated in earlier action. *Melara v. China North Industries, Corp.*, 2009, 658 F.Supp.2d 178, appeal dismissed 2011 WL 1769716. Judgment ⇨ 713(1); Judgment ⇨ 745

Personal representative of shooting victim was barred, under District of Columbia law, from asserting equitable tolling of one-year statute of limitations for his wrongful death claim and three-year statute of limitations for other torts in his capacity as personal representative, in action against gun manufacturer, where assertion of equitable tolling was based on allegedly timely filing of claims that were later dismissed without prejudice. *Melara v. China North Industries, Corp.*, 2009, 658 F.Supp.2d 178, appeal dismissed 2011 WL 1769716. Death ⇨ 39; Limitation Of Actions ⇨ 104.5

12. Persons entitled to sue

District court would award estate of individual, who, while residing in Israel, was abducted and executed by an Islamic militant terrorist organization, \$2 million under the District of Columbia Survivor Act for pain and suffering he endured before his death, in its action against Islamic Republic of Iran and the Iranian Ministry of Information and Security, where decedent suffered mental and physical harm for six days as a hostage and surely knew moments before his death that he was going to be executed. *Wachsman ex rel. Wachsman v. Islamic Republic of Iran*, 2009, 603 F.Supp.2d 148. Death ⇨ 95(1)

Additional recovery under the District of Columbia Survivor Act is available for the decedent's pain and suffering; the amount recoverable depends on the circumstances of the case, but the award typically increases the longer a victim experiences pain and suffering before death. *Wachsman ex rel. Wachsman v. Islamic Republic of Iran*, 2009, 603 F.Supp.2d 148. Death ⇨ 82; Death ⇨ 95(1)

Individual, who, while residing in Israel, was abducted and executed by an Islamic militant terrorist organization, could have sued Islamic Republic of Iran and the Iranian Ministry of Information and Security, prior to his death, for their material support of the terrorist organization for intentional infliction of emotional distress (IIED), so as to permit his estate to pursue his IIED claim under the District of Columbia Survivor Act. *Wachsman ex rel. Wachsman v. Islamic Republic of Iran*, 2009, 603 F.Supp.2d 148. Death ⇨ 15

Claim under District of Columbia Survivor Act must be brought by the legal representative of the

RIGHT TO REMEDY

decedent's estate, and all proceeds recovered by the representative pass to the decedent's estate. *Schoenborn v. Washington Metropolitan Area Transit Authority*, 2007, 247 F.R.D. 5. Death ⇨ 31(3.1); Death ⇨ 101

Daughter did not have legally cognizable interest in deceased mother's probable net future earnings as compensation to mother's estate by any recovery under District of Columbia Survival Act, which was subject of personal representative's survival action, as required for daughter's intervention as of right, since any proceeds recovered by representative would pass to estate, rather than compensating daughter beneficiary for loss of economic benefit she could reasonably have expected to receive from decedent during remainder of decedent's life or for lost incidents of family association or grief suffered. *Schoenborn v. Washington Metropolitan Area Transit Authority*, 2007, 247 F.R.D. 5. Federal Civil Procedure ⇨ 339

13.5. Summary judgment

A genuine issue of material fact existed as to whether patient actually had, or should have recognized, some evidence of wrongdoing by hospital or physician in the days prior to his death, precluding summary judgment in favor of hospital on limitations grounds in medical malpractice action filed by patient's personal representative. *Santos v. George Washington University Hosp.*, 2009, 980 A.2d 1070. Federal Courts ⇨ 1055

17. Damages—In general

Under District of Columbia's Survival Act, it was fair and reasonable for United States to compensate estate of patient at Army hospital, who had been treated for Achilles tendon rupture and died as a result of deep venous thrombosis (DVT), an amount of \$200,000; patient suffered two episodes of significant and frightening chest pain and short-windedness prior to his death, and on day of his death suffered tremendous pain when his blood stopped circulating and arteries in his lungs clogged with coagulation. *Burton v. U.S.*, 2009, 668 F.Supp.2d 86, appeal dismissed 2010 WL 1633172. Death ⇨ 95(1)

Extraordinary child-rearing expenses are not recoverable under District of Columbia's wrongful death and survival statutes. *Dyson v. Winfield*, 2001, 129 F.Supp.2d 22. Death ⇨ 85

Claims for emotional distress sustained by child's survivors, and those extraordinary child rearing expenses caused by the child's chronic birth defects which eventually led to his death were not recoverable under the District of Columbia's wrongful death and survival statutes. *Dyson v. Winfield*, 2000, 113 F.Supp.2d 44, on reconsideration in part 129 F.Supp.2d 22. Death ⇨ 85; Death ⇨ 89

Chapter 3

Limitation of Actions.

Section	Section
12-301. Limitation of time for bringing actions.	12-310. Actions arising out of death or injury caused by defective or unsafe improvements to real property.
12-302. Disability of plaintiff.	12-311. Actions arising out of death or injury caused by exposure to asbestos.
12-309. Actions against District of Columbia for unliquidated damages; time for notice.	

§ 12-301. Limitation of time for bringing actions.

Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

- (1) for the recovery of lands, tenements, or hereditaments — 15 years;
- (2) for the recovery of personal property or damages for its unlawful detention — 3 years;
- (3) for the recovery of damages for an injury to real or personal property — 3 years;
- (4) for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or false imprisonment — 1 year;
- (5) for a statutory penalty or forfeiture — 1 year;
- (6) on an executor's or administrator's bond — 5 years; on any other bond or single bill, covenant, or other instrument under seal — 12 years;
- (7) on a simple contract, express or implied — 3 years;
- (8) for which a limitation is not otherwise specially prescribed — 3 years;
- (9) for a violation of § 7-1201.01(11);
- (10) for the recovery of damages for an injury to real property from toxic substances including products containing asbestos — 5 years from the date the injury is discovered or with reasonable diligence should have been discovered;
- (11) for the recovery of damages arising out of sexual abuse that occurred while the victim was a minor — 7 years from the date that the victim attains the age of 18, or 3 years from when the victim knew, or reasonably should have known, of any act constituting abuse, whichever is later.

This section does not apply to actions for breach or contracts for sale governed by § 28:2-725, nor to actions brought by the District of Columbia government.

(Dec. 23, 1963, 77 Stat. 510, Pub. L. 88-241, § 1; Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 2; Mar. 3, 1979, D.C. Law 2-136, § 805(c), 25 DCR 5055; Feb. 28, 1987, D.C. Law 6-202, § 3, 34 DCR 527; Apr. 30, 1988, D.C. Law 7-104, § 2(a), 35 DCR 147; Mar. 13, 2004, D.C. Law 15-105, § 99, 51 DCR 881; Mar. 25, 2009, D.C. Law 17-368, § 2, 56 DCR 1338.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 15-105, in par. (9), substituted “§ 7-1201.01(11)” for “the District of Columbia Mental Health Information Act of 1978 (D.C. Official Code, sec. 7-1201.01 *et seq.*)”.

L.C. Law 17-368 added par. (11).

Legislative History of Laws

Law 15-105, the “Technical Amendments Act of 2003”, was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291

and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Law 17-368, the “Intrafamily Offenses Act of 2008”, was introduced in Council and assigned Bill No. 17-55 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 22, 2009, it was assigned Act No. 17-703 and transmitted to both Houses of Congress for its review. D.C. Law 17-368 became effective on March 25, 2009.

United States Supreme Court

*Time to file,**Employment discrimination,*

Age discrimination, supplemental jurisdiction, statute of limitations, state university consent to suit in federal court, see *Raygor v. Regents of University of Minnesota*, U.S.Minn.2002, 122 S.Ct. 999, 534 U.S. 533, 152 L.Ed.2d 27.

Civil rights action, hostile work environment, wrongful termination and failure-to-transfer claims, federal statute of limitations for claims made possible by post-1990 federal act, amendments to existing statutes, see *Jones v. R.R. Donnelley & Sons Co.*, 2004, 124 S.Ct. 1836, 541 U.S. 369, 158 L.Ed.2d 645.

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2. Construction and application

Generally, under District of Columbia law, a cause of action can be brought within the given limitations time period from when the time the right to maintain the action accrues. *Perry v. Scholar*, 2010, 696 F.Supp.2d 91. Limitation Of Actions ⇨ 43

The three-year statute of limitations found in District of Columbia Code applies to most *Bivens* actions, unless the claim is for constitutional torts specifically listed in another provision of the Code. *Bame v. Clark*, 2006, 466 F.Supp.2d 105, appeal dismissed 2007 WL 1760490. United States ⇨ 50.20

Functions of the water and sewer authority, a separate corporate body that was distinct from the District, were proprietary in nature, and thus, the authority was subject to the statute of limitations; therefore, remand was necessary in dispute over unpaid water and sewer bills so that the trial court could determine whether the statute of limitations precluded the authority from collecting on unpaid bills of property owner. *New 3145 Deauville, L.L.C. v. First American Title Ins. Co.*, 2005, 881 A.2d 624. Federal Courts ⇨ 1067; Municipal Corporations ⇨ 712(9); Water Law ⇨ 2238

Ambiguity created by "District of Columbia" and "the District of Columbia government" throughout the statutes with no indication whether they were interchangeable or whether they had different meanings in different contexts required examination of other sources, including the legislative history, to interpret statute making time limitations inapplicable to actions brought by the District of Columbia government. *District of Columbia Water and Sewer Authority v. Delon Hampton & Associates*, 2004, 851 A.2d 410. Federal Courts ⇨ 1052.1

District of Columbia Water and Sewer Authority (WASA) was not part of the "District of Columbia government" within the meaning of statute making time limitations inapplicable to actions brought by the District of Columbia government; WASA was suing a private contractor for monetary losses from alleged breach of arm's length contract and negligent performance, and it was a distinctly independent agency established to engage in proprietary activities. *District of Columbia Water and Sewer Authority v. Delon Hampton & Associates*, 2004, 851 A.2d 410. Federal Courts ⇨ 1052.1

1. Purpose

An underlying aim of the District of Columbia Council in enacting statute that makes time limitations inapplicable to actions brought by the District of Columbia government was to ensure that the District received, at the least, the benefit of the common law principle of *nullum tempus occurrit regi* that no time runs against the sovereign. *District of Columbia Water and Sewer Authority v. Delon Hampton & Associates*, 2004, 851 A.2d 410. Federal Courts ⇨ 1052.1

2.5. Construction with federal law

District of Columbia's three-year "catch-all" statute of limitations on matters for which a limitation period had not otherwise been prescribed did not apply to employee's claims against employer under Uniformed Services Employment and Reemployment Rights Act (USERRA). *Potts v. Howard University Hosp.*, 2009, 598 F.Supp.2d 36, on reconsideration in part 623 F.Supp.2d 68. *Armed Services* ⇨ 122(1)

3. Conflicts of law

Florida's five-year statute of limitations for tort and contract actions applied to former client's breach of contract and breach of fiduciary duty claims against attorney and law firm, rather than District of Columbia's three-year statute of limitations for breach of contract and breach of fiduciary claims, since Florida law would have applied had case not been transferred to District of Columbia. *Klayman v. Barmak*, 2009, 602 F.Supp.2d 110. *Federal Courts* ⇨ 146; *Federal Courts* ⇨ 1040.1

Under District of Columbia choice of law rules, District of Columbia statute of limitations applied in District of Columbia resident's diversity products liability action against New York corporation; corporation's statute of limitations argument was procedural, mandating application of forum's statute. *Gassmann v. Eli Lilly and Co.*, 2005, 407 F.Supp.2d 203. *Limitation Of Actions* ⇨ 2(3)

Under District of Columbia law, a statute of limitations is not governed by the law of the forum in instances where limitations is part of the cause of action itself. *Jaffe v. Pallotta Teamworks*, 2003, 276 F.Supp.2d 102, reversed and remanded 374 F.3d 1223, 362 U.S.App.D.C. 398. *Limitation Of Actions* ⇨ 2(1)

Under District of Columbia choice-of-law rules, statutes of limitations were procedural, and thus District of Columbia statute of limitations applied to state law claims brought in District under federal district court's supplemental jurisdiction. *Jin v. Ministry of State Security*, 2003, 254 F.Supp.2d 61. *Limitation Of Actions* ⇨ 2(1)

4.5. Administrative delay

Court would take judicial notice of the administrative delay occurring in most instances between the court clerk's receipt of an in forma pauperis (IFP) complaint and the formal filing or docketing of the complaint, and determine that plaintiff's §§ 1983 action, though docketed as filed outside three-year limitations period applicable to §§ 1983 actions in District of Columbia, was timely filed. *Lewis v. Government of District of Columbia*, 2009, 643 F.Supp.2d 119. *Evidence* ⇨ 42; *Limitation Of Actions* ⇨ 118(2)

5. Limitation applicable to action—In general

Where cause of action with no prescribed statute of limitations is intertwined with one having a prescribed limitations period, District of Columbia courts apply prescribed period. *Browning v. Clinton*, C.A.D.C.2002, 292 F.3d 235, 352 U.S.App.D.C. 4, rehearing denied. *Limitation Of Actions* ⇨ 16

Under District of Columbia law, when cause of action with no prescribed statute of limitations is intertwined with one having prescribed limitations period, that prescribed period, rather than residual three-year limitations period, applies. *Jovanovic v. US-Algeria Business Council*, 2008, 561 F.Supp.2d 103. *Limitation Of Actions* ⇨ 16

Under District of Columbia law, three-year statute of limitations for actions for which a limitation was not otherwise specially prescribed, and not one-year limitation period for assault, applied to *Bivens* action brought by arrestees, who alleged that their Fourth Amendment rights to be free from unreasonable searches were violated when they were strip searched following their arrests at a public protest; although the allegedly unconstitutional search was of arrestees' bodies and may have constituted an assault if not authorized by law, the harm transcended that of a mere assault. *Bame v. Clark*, 2006, 466 F.Supp.2d 105, appeal dismissed 2007 WL 1760490. *United States* ⇨ 50.20

Qualified heir claimants were injured by attorney's failure to pursue federal estate tax refund based on overpayment of such taxes, and cause of action for legal malpractice occurred, for purposes of three-year limitations period, when IRS disputed efficacy of refund claim memorandum as informal administrative claim to protect all refund claims, which dispute required heirs to litigate matter with IRS. *Hillbroom v. PricewaterhouseCoopers LLP*, 2011, 17 A.3d 566. *Limitation Of Actions* ⇨ 55(3)

Since no statute of limitations is specified for actions brought under the District of Columbia Consumer Protection Act, the residual three-year statute of limitations applies. *Murray v. Wells Fargo Home Mortg.*, 2008, 953 A.2d 308. *Anti-trust And Trade Regulation* ⇨ 353

In a determination of the applicable statute of limitations, the plaintiff's characterization of the claim is not controlling, and courts must look beyond the conclusory terms of the pleadings to the substantive elements of any alleged causes of action. *Burgess v. Pelkey*, 1999, 738 A.2d 783, certiorari denied 120 S.Ct. 1834, 529 U.S. 1099, 146 L.Ed.2d 778. *Limitation Of Actions* ⇨ 16

6. — Construction with other laws, limitation applicable to action

One-year statutes of limitations applied to District of Columbia employee's claims under District of Columbia Human Rights Act (DCHRA) and common law of slander. *Savoy v. VMT Long Term Care Management Co., Inc.*, 2007, 522 F.Supp.2d 211. *Civil Rights* ⇨ 1732; *Libel And Slander* ⇨ 76

District of Columbia's three-year general statute of limitations applied, in determining the proper time period for any damages accruing under Montana and North Dakota state law infringement claims asserted by seller of consumer and commercial fireworks against competitor. *Gaudreau v. American Promotional Events, Inc.*, 2007, 511 F.Supp.2d 152. *Trademarks* ⇨ 1562

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Under District of Columbia Survival Act, decedent's sister did not have standing to bring wrongful death action, despite sister's contention that right to pursue wrongful death claim was property of their mother and descended to her upon mother's death, where mother was alive throughout statutory period for filing suit, but failed to do so. *Dickens v. District of Columbia*, 2007, 502 F.Supp.2d 90. Death ⇨ 31(5)

Mortgagor's District of Columbia law claims were not "intertwined" with her Truth in Lending Act (TILA) claims, and therefore D.C. claims were not governed by TILA's limitations period; the TILA claims turned on alleged failures to make disclosures and effectuate rescission, while D.C. claims involved elements different from or additional to those TILA elements, including unconscionable and burdensome terms, impermissibly charged points, closing in mortgagor's home, an unlicensed mortgage broker, and/or misleading representations as to loan suitability and affordability. *Johnson v. Long Beach Mortg. Loan Trust 2001-4*, 2006, 451 F.Supp.2d 16. Consumer Credit ⇨ 65

8. — False arrest or imprisonment, limitation applicable to action

Pro se arrestee's claims against city officials for false arrest, assault, and false imprisonment were governed by District of Columbia's one-year limitations period for such claims, rather than its three-year limitations period for suits concerning the recovery of personal property, even if arrestee's personal property was damaged or lost when he was arrested. *Roum v. Fenty*, 2010, 697 F.Supp.2d 39. Assault And Battery ⇨ 21; False Imprisonment ⇨ 18

Arrestee's negligence claim against District of Columbia, to extent it was based on alleged negligence of arresting officers' superiors with respect to hiring, training, and supervising the officers, was separate and distinct from her false arrest claim, and thus, negligence claim was not recharacterization of false arrest claim, as would subject negligence claim to one-year limitations period for intentional tort claims, rather than three-year limitations period for negligence claims. *Stewart-Veal v. District of Columbia*, 2006, 896 A.2d 232. District Of Columbia ⇨ 36

Arrestee's negligence claim against District of Columbia, to extent it was based on actions of arresting officers and not on actions of their superiors, was not separate and distinct from her false arrest claim, and thus, negligence claim regarding officers' conduct was subject to one-year limitations period for intentional tort claims, rather than three-year limitations period for negligence claims. *Stewart-Veal v. District of Columbia*, 2006, 896 A.2d 232. District Of Columbia ⇨ 36

9. — Assault, battery, mayhem or wounding, limitation applicable to action

District of Columbia statute of limitations for plaintiff's sexual assault and battery claim began to run on date the alleged assault occurred. *Carter v. Washington Metropolitan Transit Authority*,

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2006, 451 F.Supp.2d 150, reversed and remanded 503 F.3d 143, 378 U.S.App.D.C. 244. Limitation Of Actions ⇨ 55(4)

Where business owner's assault claim against the District of Columbia, based on alleged conduct of D.C. agents when they physically entered business owner's premises and unlawfully seized and removed personal effects, was barred by statute of limitations, business owner's intentional infliction of emotional distress claim, based on alleged acts, threats, verbal abuse and physical aggression by same agents during same incident, was also barred; claims were intertwined. *Tibbs v. Williams*, 2003, 263 F.Supp.2d 39. Damages ⇨ 57.25(2)

Former employee's intentional infliction of emotional distress claim under District of Columbia law was intertwined with her hostile work environment claim against supervisor, and, thus, one-year limitation period for assault and battery claims under District of Columbia law, rather than three year residual period, applied to claim. *Thompson v. Jasas Corp.*, 2002, 212 F.Supp.2d 21. Limitation Of Actions ⇨ 31

The District of Columbia, as a municipality, enjoys limited sovereign immunity from the operation of statutes of limitation under statute and the common law doctrine of nullum tempus occurrit regi (no time runs against the sovereign), while in the performance of public functions. *Solid Rock Church, Disciples of Christ v. Friendship Public Charter School, Inc.*, 2007, 925 A.2d 554. Limitation Of Actions ⇨ 11(1)

10. — Fraud, limitation applicable to action

Borrower knew or had reason to know of forged signature on loan application when she received loan that resulted from application, thereby triggering three-year statute of limitations, under District of Columbia law, for borrower to bring fraud claim against mortgage brokerage and its broker. *Pricer v. Deutsche Bank*, 2012, 2012 WL 360505. Limitation of Actions ⇨ 100(12)

Graduate student knew or had reason to know of her fraud claim against university premised on failure to award her credit hours she needed to complete her program, triggering District of Columbia's three-year limitations period, when she received e-mail from university stating that she was not eligible for graduation because she had not completed required credit hours. *Ling Yuan Hu v. George Washington University*, 2011, 766 F.Supp.2d 236, affirmed 2011 WL 3241457, rehearing en banc denied. Limitation of Actions ⇨ 100(12)

The statute of limitations for civil actions for fraud does not apply to will contests under the probate code. *In re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Wills ⇨ 260

10.5. — Breach of fiduciary duty, limitation applicable to action

Cause of action for breach of fiduciary duty accrued, and three-year statute of limitations un-

der District of Columbia law began to run, when immigration attorneys' client was terminated from employment with their common employer, giving rise to alleged conflict of interest. *Mawalla v. Hoffman*, 2008, 569 F.Supp.2d 253. Limitation Of Actions ⇨ 99(1)

11. — Civil rights, limitation applicable to action

Three-year limitation period under District of Columbia law that applied to federal anti-discrimination claims brought by former graduate student against university and university officials began to run on the date he learned of his dismissal by letter from the university; university's subsequent refusal to reverse or alter its decision in the aftermath of its dismissal notification did not trigger the limitations period. *Mwabira-Simera v. Howard University*, 2010, 692 F.Supp.2d 65. Limitation Of Actions ⇨ 95(15)

The District of Columbia's residuary three-year limitation period applies only if the intentional infliction of emotional distress claim is not intertwined with any of the causes of action for which a period of limitation is specifically provided. *Munoz v. Board of Trustees of University of District of Columbia*, 2008, 590 F.Supp.2d 21, affirmed 427 Fed.Appx. 1, 2011 WL 1753790, rehearing en banc denied. Limitation Of Actions ⇨ 31

University professor's intentional infliction of emotional distress claim against university's board of trustees, based on same conduct that formed her District of Columbia Human Rights Act (DCHRA) claim against board alleging race and national origin discrimination, was intertwined with DCHRA claim and emotional distress claim assumed DCHRA's one-year statute of limitations period, rather than District of Columbia's three-year residual limitation period. *Munoz v. Board of Trustees of University of District of Columbia*, 2008, 590 F.Supp.2d 21, affirmed 427 Fed.Appx. 1, 2011 WL 1753790, rehearing en banc denied. Limitation Of Actions ⇨ 31

District of Columbia's general three-year statute of limitations for personal injury actions applied to plaintiff's §§ 1983 action. *Curtis v. Lanier*, 2008, 535 F.Supp.2d 89. Federal Courts ⇨ 1040.1

District of Columbia's three-year catchall limitations period, rather than thirty-day limitation period for appeals from administrative decisions, governed parent's action against public charter school for attorney fees under IDEA. *Brown ex rel. P.L. v. Barbara Jordan Public Charter School*, 2007, 495 F.Supp.2d 1. Schools ⇨ 155.5(5)

District of Columbia's three-year catchall limitations period, not thirty-day limitations period provided in Rules of District of Columbia Court of Appeals for review of agency decisions or orders which governed appeals from hearing officer determinations (HOD), applied to actions for attorney fees brought under IDEA. *Armstrong v. Vance*, 2004, 328 F.Supp.2d 50. Schools ⇨ 155.5(5)

Terminated employee's §§ 1981 claim was subject to three-year District of Columbia statute of limitations for personal injury claims. *Pyne v.*

District of Columbia, 2002, 298 F.Supp.2d 7. Civil Rights ⇨ 1383

Under District of Columbia law, pendency of civil rights action against university by former university student and his two adult children, who alleged that the university deported the two children, who were United States citizens, when the children were minors and living in the university's dormitory, which action was involuntarily dismissed, did not toll the three-year statute of limitations for deprivation of civil rights. *Osuchukwu v. Gallaudet University*, 2002, 296 F.Supp.2d 1. Limitation Of Actions ⇨ 105(1)

One-year limitations period for black Democratic applicant's discrimination and retaliation claims under the District of Columbia Human Rights Act (DCHRA) began to run when employer allegedly refused to hire applicant in violation of DCHRA. *Morgan v. Federal Home Loan Mortg. Corp.*, 2001, 172 F.Supp.2d 98, affirmed 328 F.3d 647, 356 U.S.App.D.C. 109, certiorari denied 124 S.Ct. 325, 540 U.S. 881, 157 L.Ed.2d 146. Limitation Of Actions ⇨ 58(1)

District of Columbia's residual three-year statute of limitations applied to §§ 1983 claims alleging use of excessive force, false arrest and imprisonment, malicious prosecution, and conspiracy. *Parker v. Grand Hyatt Hotel*, 2000, 124 F.Supp.2d 79. Civil Rights ⇨ 1382; Civil Rights ⇨ 1384; Conspiracy ⇨ 16

District of Columbia's borrowed three year "catchall" statute of limitations, not the 90-day limitations period for appeals of IDEA administrative hearings submitted to district courts, applied to IDEA action to recover attorney fees from District; action was independent from, not ancillary to, underlying administrative proceeding. *Wilson v. Government of District of Columbia*, 2010, 269 F.R.D. 8. Schools ⇨ 155.5(5)

A plaintiff attempting to establish a continuing violation, for purpose of extending limitations period under Human Rights Act, must demonstrate continuous and repetitious wrong with damages flowing from the act as a whole, rather than from each individual act. *Boulton v. Institute of Intern. Educ.*, 2002, 808 A.2d 499. Limitation Of Actions ⇨ 58(1)

A continuing violation exists, for purposes of extending limitations period under Human Rights Act, where there is a series of related acts, one or more of which falls within the limitations period, or the maintenance of a discriminatory system both before and during the statutory period, and such discrimination may not be limited to isolated incidents, but must pervade a series or pattern of events which continue into the filing period. *Boulton v. Institute of Intern. Educ.*, 2002, 808 A.2d 499. Limitation Of Actions ⇨ 58(1)

Employee's sexual orientation discrimination claim under Human Rights Act was time barred since, other than his termination, the acts of sexual orientation discrimination of which he complained occurred outside the one-year limitations period and employee did not present evidence of continu-

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ing violations which extended into the one year period before he filed suit. *Boulton v. Institute of Intern. Educ.*, 2002, 808 A.2d 499. Limitation Of Actions ⇨ 58(1)

The limitation period for a civil action brought pursuant to the Human Rights Act is one year. *Boulton v. Institute of Intern. Educ.*, 2002, 808 A.2d 499.

12. — Libel and slander, limitation applicable to action

Under District of Columbia law, where prospective author's tortious interference claim against former President's aide was intertwined with defamation claim against aide, and had no basis, as to aide herself, apart from aide's allegedly defamatory statements, tortious interference claim was subject to same one-year statute of limitations applicable to defamation claim, and had to be dismissed as time-barred. *Browning v. Clinton*, C.A.D.C.2002, 292 F.3d 235, 352 U.S.App.D.C. 4, rehearing denied. Torts ⇨ 253

Under District of Columbia law, international business council member's fraud claim against council was not intertwined with his defamation claim, and thus was subject to residual three-year limitations period, rather than one-year statute of limitations for defamation claims, even though member referred to some passages of allegedly libelous correspondence from council's chairman in support of both his fraud and defamation claims, where fraud claim involved additional elements beyond those required for his defamation claim, including his allegations that he reasonably relied to his detriment upon the representations included in correspondence. *Jovanovic v. US-Algeria Business Council*, 2008, 561 F.Supp.2d 103. Fraud ⇨ 38

Under District of Columbia law, international business council member's claims against council for tortious interference with contract and prospective business advantage and intentional infliction of emotional distress were intertwined with his defamation claim, and thus were subject to one-year statute of limitations for defamation claims, rather than residual three-year limitations period, where defamation claim alleged that correspondence from council's chairman included false statements that member had made significant misrepresentations, had uneven history regarding monetary obligations, and did not have business or personal relations with individuals and entities affiliated with council, tortious interference claims alleged that, as result of allegedly false correspondence, Algerian government decided not to use member's company for development of highway project, and intentional infliction of emotional distress claim alleged that member suffered severe emotional distress upon reading allegedly false statements. *Jovanovic v. US-Algeria Business Council*, 2008, 561 F.Supp.2d 103. Limitation Of Actions ⇨ 31; Torts ⇨ 253

Under District of Columbia law, one-year statute of limitations applied to employee's defamation claims against her former employer. *Turner v.*

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Federal Express Corp., 2008, 539 F.Supp.2d 404. Libel And Slander ⇨ 76

Alleged misrepresentations by non-profit organization to the public, through organization's published analytical reports and organization's web site, that organization was organized under laws of Belgium and that Belgium was the place from which the organization published its allegedly defamatory communications, did not relate to the elements of the defamation claims asserted by Serbian businessman and his affiliated companies, relating to organization's published analytical report and an e-mail sent by organization's employee to the then-Vice-President of Serbia, and thus, organization was not equitably estopped from asserting protection under District of Columbia's one-year limitations period for defamation claims, though the alleged misrepresentations allegedly caused businessman and his companies to initially file their defamation complaint in Belgian court rather than in District of Columbia. *Jankovic v. International Crisis Group*, 2006, 429 F.Supp.2d 165, affirmed in part, reversed in part and remanded 494 F.3d 1080, 377 U.S.App.D.C. 434. Limitation Of Actions ⇨ 13

Plaintiffs' claims, under District of Columbia law, for false light invasion of privacy and tortious interference with business expectancy were subject to District's one-year statute of limitations for a defamation claim; District did not have express limitations period for false light or tortious interference claims, and plaintiffs' false light and tortious interference claims were intertwined with their defamation claim. *Jankovic v. International Crisis Group*, 2006, 429 F.Supp.2d 165, affirmed in part, reversed in part and remanded 494 F.3d 1080, 377 U.S.App.D.C. 434. Torts ⇨ 253; Torts ⇨ 413

One-year statute of limitations for libel claims in District of Columbia applies to defamation claims as well. *Dove v. Washington Metropolitan Area Transit Authority*, 2005, 402 F.Supp.2d 91. Libel And Slander ⇨ 76

Under District of Columbia law, because statute of limitations for defamation claims runs from date of original publication, any subsequent sale or delivery of copy of publication does not create new cause of action. *Jin v. Ministry of State Security*, 2003, 254 F.Supp.2d 61. Limitation Of Actions ⇨ 55(1)

Under District of Columbia law, statute of limitations for Falun Gong practitioners' defamation claims against Chinese television corporation was not tolled by corporation's re-broadcasts or dissemination of footage of allegedly defamatory staged news event in United States. *Jin v. Ministry of State Security*, 2003, 254 F.Supp.2d 61. Limitation Of Actions ⇨ 55(1)

Under District of Columbia law, one-year statute of limitations for libel and slander claims applied to defamation claim. *Thompson v. Jasas Corp.*, 2002, 212 F.Supp.2d 21. Libel And Slander ⇨ 76

Former employee did not allege conduct which fell within one year statute of limitations under

District of Columbia law for defamation claims, and, thus, claim was time barred, where employee supplied no dates for time period in which conduct took place and did not defend statute of limitations defect which defendants brought up on motions to dismiss. *Thompson v. Jasas Corp.*, 2002, 212 F.Supp.2d 21. Limitation Of Actions ⇨ 55(1)

Limitations period for bringing defamation claim in District of Columbia is one year. *Stith v. Chadbourne & Parke, LLP.*, 2001, 160 F.Supp.2d 1. Libel And Slander ⇨ 76

12.5. — Intentional infliction of emotional distress, limitation applicable to action

Under District of Columbia law, one-year statute of limitations, rather than three-year limitations period, applied to plaintiff's claims of negligent and intentional infliction of emotional distress; claims were based on defendant's alleged conduct of falsely accusing plaintiff of stalking and harassment in order to cause plaintiff to be arrested and incarcerated, which were intertwined with the tort of malicious prosecution, which had one-year limitations period. *Rogers v. Johnson-Norman*, 2006, 466 F.Supp.2d 162. Limitation Of Actions ⇨ 31

Defamation, assault, battery, false arrest, false light, and false imprisonment claims were time-barred under District of Columbia's one-year statute of limitations; furthermore, since there was no independent basis for plaintiffs' intentional infliction of emotional distress claim, it was subject to the one-year limitations period, rather than three year limitations period for residual tort claims. *Rynn v. Jaffe*, 2006, 457 F.Supp.2d 22. Limitation Of Actions ⇨ 31; Limitation Of Actions ⇨ 55(1); Limitation Of Actions ⇨ 55(4)

13. — Injuries to person, limitation applicable to action

Three-year limitation period applicable to a claim for personal injury under District of Columbia law applied to former graduate student's claims against university and others under Title VI, Title IX, the Rehabilitation Act, and the ADA. *Mwabi-Simera v. Howard University*, 2010, 692 F.Supp.2d 65. Civil Rights ⇨ 1380

Three-year limitations period for residual or general personal injury actions of District of Columbia, where suit was brought, rather than two-year limitations period provided in Virginia law, where events occurred, applied to *Bivens* claim against United States Coast Guard captain in individual capacity. *Schwaner v. USCG Headquarters*, 2008, 588 F.Supp.2d 49. United States ⇨ 50.20

Issues of fact existed as to when woman was on inquiry notice that her infertility might be result of her in utero exposure to diethylstilbestrol (DES), precluding summary judgment on statute of limitations grounds in woman's products liability action against DES manufacturer. *Gassmann v. Eli Lilly and Co.*, 2005, 407 F.Supp.2d 203. Federal Civil Procedure ⇨ 2515

District of Columbia's one-year statute of limitation for claims of libel, slander, assault, battery,

mayhem, wounding, malicious prosecution, and false arrest or false imprisonment did not govern hotel patrons' claims against hotel, District of Columbia, and police officers for negligent supervision, intentional infliction of emotional distress, conversion, and negligent infliction of emotional distress, which were not enumerated in statute and thus were subject to District of Columbia's three-year residual limitations period. *Parker v. Grand Hyatt Hotel*, 2000, 124 F.Supp.2d 79. Conversion And Civil Theft ⇨ 153; Limitation Of Actions ⇨ 31

If claim of negligent or intentional infliction of emotional distress is intertwined with a tort enumerated under District of Columbia's one-year statute of limitation, such as assault or battery, the one-year limitation also will govern the emotional distress claim; otherwise, the three-year residual limitation period applies. *Parker v. Grand Hyatt Hotel*, 2000, 124 F.Supp.2d 79. Limitation Of Actions ⇨ 31

14. — Injuries to property, limitation applicable to action

Three-year general limitations period under District of Columbia law, rather than one year period for intentional torts, applied to *Bivens* claims by officer with United States Park Police (USPP), alleging violations of his Fourth and Fifth Amendment rights. *McDonald v. Salazar*, 2011, 2011 WL 6739422. United States ⇨ 50.20

15. — Legal malpractice, limitation applicable to action

Additional discovery was warranted prior to ruling on motions for summary judgment filed by law firms and attorneys in legal malpractice action asserting that clients' claims based on their failure to file translation of their patent application were barred by statute of limitations, where clients claimed that did not have any knowledge of any injury resulting from attorneys' failure to file until, at earliest, date on which Federal Circuit denied their petition for panel rehearing, and parties had yet to engage in discovery. *Seed Co., Ltd. v. Westerman*, 2012, 2012 WL 28521. Federal Civil Procedure ⇨ 2553

Under District of Columbia law, a legal malpractice claim must be brought within three years from the time the right to maintain the cause of action accrues. *Mawalla v. Hoffman*, 2008, 569 F.Supp.2d 253. Limitation Of Actions ⇨ 55(3)

Under District of Columbia law, the statute of limitations governing a legal malpractice claim is three years. *Gallucci v. Schaffer*, 2007, 507 F.Supp.2d 85. Attorney And Client ⇨ 129(1)

Under District of Columbia law, claims for breach of fiduciary duty and for legal malpractice must be raised within three years of the victims's discovery of the breach. In re Greater Southeast Community Hospital Corp., 2005, 333 B.R. 506. Limitation Of Actions ⇨ 95(11); Limitation Of Actions ⇨ 100(7)

Limitations period for client's legal malpractice claim against attorney, relating to dismissal, as

time-barred under insurance contract, of her underlying action against long-term-disability (LTD) insurer which had denied her claim for LTD benefits, was not tolled during pendency of client's post-dismissal motion for reconsideration of the dismissal, which motion had been treated by the trial court, in the underlying action, as a motion to alter or amend judgment, even if there was no final, appealable judgment until trial court denied that motion. *Bleck v. Power*, 2008, 955 A.2d 712. Limitation Of Actions ⇨ 55(3)

16. — Health care malpractice, limitation applicable to action

Cause of action for medical malpractice accrued, and three-year limitations period began to run, when it was determined surgically that patient's illness was a result of diverticulitis and a ruptured diverticular abscess. *Hardi v. Mezzanotte*, 2003, 818 A.2d 974. Limitation Of Actions ⇨ 95(12)

18. — Labor and employment claims, limitation applicable to action

Former employee's claim for penalties under ERISA based on employer's retirement committee's failure to provide her with certain requested documents related to her retirement plan accrued when she received committee's response to her request for documents, where participant knew that response was deficient, and assumed that committee had provided her everything it was going to provide. *Walker v. Pharmaceutical Research and Mfrs. of America*, 2011, 2011 WL 6098003. Limitation of Actions ⇨ 95(14)

One-year limitations period under District of Columbia Human Rights Act (DCHRA), not three-year statute of limitations governing breach of contract claims, would be borrowed for claim of interference with ERISA-protected rights. *Cox v. Graphic Communications Conference of Intern. Broth. of Teamsters*, 2009, 603 F.Supp.2d 23. Federal Courts ⇨ 424; Labor And Employment ⇨ 856

One-year statute of limitations on employee's District of Columbia claims of sex discrimination, rather than District of Columbia's "catch-all" statute of limitations of three years, applied to employee's employment discrimination claim against employer. *Potts v. Howard University Hosp.*, 2009, 598 F.Supp.2d 36, on reconsideration in part 623 F.Supp.2d 68. Civil Rights ⇨ 1732

In District of Columbia, statute of limitations applicable to claim of wrongful discharge in violation of public policy is three-year "catch-all" statute of limitations. *Kamen v. International Broth. of Elec. Workers (IBEW) AFL-CIO*, 2007, 505 F.Supp.2d 66. Labor And Employment ⇨ 856

While District of Columbia statute of limitations for claim for intentional infliction of emotional distress is three year residual limitations period, to extent emotional distress claim is intertwined with hostile work environment claim, it assumes hostile work environment claim's one-year limitations period. *Bryant v. The Orkand Corp.*, 2005, 407 F.Supp.2d 29. Limitation Of Actions ⇨ 31

Appropriate statute of limitations for former District of Columbia (DC) employee's disability discrimination claims against DC under Rehabilitation Act, which did not specify the applicable limitations period, was the one-year limitations period set out in District of Columbia's Human Rights Act (HRA) for claims of unlawful discrimination, as opposed to default choice of DC's three-year limitations period for personal injury claims; a Rehabilitation Act claim was far more similar to an HRA claim than it was to an ordinary personal injury claim, and borrowing HRA's limitations period would not stymie policies underlying Rehabilitation Act. *Jaiyeola v. District of Columbia*, 2012, 2012 WL 1032697. Civil Rights ⇨ 1530; Federal Courts ⇨ 1040.1

As a losing party in employment discrimination case before the Department of Human Rights (DHR), the District of Columbia Housing Authority (DCHA) was entitled to petition for review in the superior court of the DHR decision, where it was aggrieved by the administrative decision against it and filed its review petition within three years of the agency determination. *District of Columbia Housing Authority v. District of Columbia Office of Human Rights*, 2005, 881 A.2d 600. Civil Rights ⇨ 1712; Civil Rights ⇨ 1732

19. — Securities or corporations, limitation applicable to action

Statute of limitations on claim, by securities brokerage customer, that National Association of Securities Dealers, Inc. (NASD) committed professional negligence by improperly changing venue for arbitration of claims against broker, began to run on date that customer received notice of venue change. *Bradley v. National Ass'n of Securities Dealers Dispute Resolution*, 2003, 245 F.Supp.2d 17, affirmed 433 F.3d 846, 369 U.S.App.D.C. 79, certiorari denied 126 S.Ct. 1320, 546 U.S. 1201, 164 L.Ed.2d 104. Limitation Of Actions ⇨ 95(10.1)

Statute of limitations on claim, by securities brokerage customer, that National Association of Securities Dealers, Inc. (NASD) committed professional negligence by improperly delaying arbitration proceedings on customer's claims against broker, began to run on date that customer received notice of cancellation of hearing and rescheduling six months later. *Bradley v. National Ass'n of Securities Dealers Dispute Resolution*, 2003, 245 F.Supp.2d 17, affirmed 433 F.3d 846, 369 U.S.App.D.C. 79, certiorari denied 126 S.Ct. 1320, 546 U.S. 1201, 164 L.Ed.2d 104. Limitation Of Actions ⇨ 95(10.1)

Statute of limitations on claim, by securities brokerage customer, that National Association of Securities Dealers, Inc. (NASD) committed professional negligence by tolerating improper discovery requests made by customer's broker in course of arbitration of customer's claims, on date that first of series of allegedly improper discovery requests was made. *Bradley v. National Ass'n of Securities Dealers Dispute Resolution*, 2003, 245 F.Supp.2d 17, affirmed 433 F.3d 846, 369 U.S.App.D.C. 79,

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certiorari denied 126 S.Ct. 1320, 546 U.S. 1201, 164 L.Ed.2d 104. Limitation Of Actions ⇨ 55(3)

Statute of limitations on claim, by securities brokerage customer, that National Association of Securities Dealers, Inc. (NASD) committed professional negligence by denying her access to file regarding arbitration proceeding involving claims against her broker, began to run on day that customer requested and was refused access at NASD's office. *Bradley v. National Ass'n of Securities Dealers Dispute Resolution*, 2003, 245 F.Supp.2d 17, affirmed 433 F.3d 846, 369 U.S.App. D.C. 79, certiorari denied 126 S.Ct. 1320, 546 U.S. 1201, 164 L.Ed.2d 104. Limitation Of Actions ⇨ 55(3)

Claims of fraud, abuse of process, and intentional infliction of emotional distress, brought by securities brokerage customer against National Association of Securities Dealers, Inc. (NASD) based upon mishandling of arbitration proceedings against her broker, began to run on same dates as expired claims of professional negligence against NASD, with which they were intertwined. *Bradley v. National Ass'n of Securities Dealers Dispute Resolution*, 2003, 245 F.Supp.2d 17, affirmed 433 F.3d 846, 369 U.S.App. D.C. 79, certiorari denied 126 S.Ct. 1320, 546 U.S. 1201, 164 L.Ed.2d 104. Limitation Of Actions ⇨ 55(1); Limitation Of Actions ⇨ 55(4); Limitation Of Actions ⇨ 99(1)

20. — Landlord and tenant, limitation applicable to action

The three-year statute of limitations did not bar tenant's recovery for housing code violations that continued past the cut-off date established by the statute of limitations; the statute only barred the recovery of damages suffered more than three years before the tenant filed suit. *Majerle Management, Inc. v. District of Columbia Rental Housing Com'n*, 2001, 768 A.2d 1003, opinion vacated in part on rehearing 777 A.2d 785. Landlord And Tenant ⇨ 200.72

Three-year statute of limitations for negligence actions, rather than 12-year statute of limitations for actions involving instruments under seal, applied to shareholder's breach of contract suit against cooperative association for performing repairs to his apartment in a negligent manner, though clause in proprietary lease stated cooperative was liable for damages caused by its negligence. D.C.Code 1981, § 12-301. *Burgess v. Pelkey*, 1999, 738 A.2d 783, certiorari denied 120 S.Ct. 1834, 529 U.S. 1099, 146 L.Ed.2d 778. Common Interest Communities ⇨ 155

21. — Contracts in general, limitation applicable to action

Under District of Columbia law, university student's claims against university and university officials for breach of contract, breach of the duty of good faith and fair dealing, fraud in the inducement, intentional infliction of emotional distress, and negligent infliction of emotional distress, in connection with the non-renewal of his full wrestling scholarship, accrued, for limitations purposes, on date that student received letter informing him

that his scholarship would not be renewed and that he had been removed from the wrestling team, rather than when his appeals to the university were denied. *LoPiccolo v. American University*, 2012, 2012 WL 19389. Limitation Of Actions ⇨ 95(4.1); Limitation Of Actions ⇨ 95(9); Limitation Of Actions ⇨ 100(12)

Claim brought by former trustees against Armenian genocide museum sponsor, alleging breach of contract with respect to sponsor's failure to reissue promissory note, accrued under District of Columbia law when reasonable time elapsed for trustees to take legal action to enforce promissory note. *Armenian Assembly of America, Inc. v. Cafesjian*, 2011, 772 F.Supp.2d 20, subsequent determination 772 F.Supp.2d 129, motion to amend denied 2011 WL 4014297. Limitation Of Actions ⇨ 46(6)

One-year contractual limitations period, under homeowners policy, applied to insureds' claim that insurer breached contract by denying coverage for damage to roof and structure of home caused by fallen tree, rather than District of Columbia's three-year statute of limitations for breach of contract claims. *Nkpado v. Standard Fire Ins. Co.*, 2010, 697 F.Supp.2d 94. Insurance ⇨ 3560; Insurance ⇨ 3564(1)

District of Columbia statute of limitations on breach of contract claims was inapplicable to tenure revocation proceedings conducted against former professor, for purposes of professor's claim seeking declaratory judgment that university could not rely on events occurring more than three years prior in making revocation decision, since proceedings were wholly governed by university's faculty code. *Saha v. Lehman*, 2008, 537 F.Supp.2d 122, affirmed 2008 WL 4726053, rehearing en banc denied, certiorari denied 129 S.Ct. 1319, 555 U.S. 1171, 173 L.Ed.2d 586, rehearing denied 129 S.Ct. 2044, 173 L.Ed.2d 1125. Colleges And Universities ⇨ 8.1(2)

Contractor was precluded from claiming that there was any equitable tolling of statute of limitations, on its claim that corporation majority owned by Colombian government breached contract to pay for power plant to be constructed in that country; contractor had all information it needed to commence timely suit, as evidenced by its filing of action similar to present case in Colombia, within limitations period. *Termorio S.A. E.S.P. v. Electricadora Del Atlantico S.A. E.S.P.*, 2006, 421 F.Supp.2d 87, affirmed 487 F.3d 928, 376 U.S.App. D.C. 242, certiorari denied 128 S.Ct. 650, 552 U.S. 1038, 169 L.Ed.2d 508. Limitation Of Actions ⇨ 104.5

Under District of Columbia law, cause of action for breach of contract accrued, and three-year limitations period began to run, when lessor substantially hindered lessee's exercise of purchase option, not when lessor notified lessee of its default and termination of contract. *Washington Metropolitan Area Transit Authority v. Quik Serve Foods, Inc.*, 2005, 402 F.Supp.2d 198. Limitation Of Actions ⇨ 95(9)

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District of Columbia's choice of law rules required district court to apply District of Columbia's procedural laws, including its three-year statute of limitations for contract claims, in railroad's action against its excess liability insurers for indemnity and breach of contract, even though accident and underlying personal injury action occurred in Missouri. *National R.R. Passenger Corp. v. Lexington Ins. Co.*, 2005, 357 F.Supp.2d 287. *Limitation Of Actions* ⇨ 2(1)

Breach of contract cause of action by former member of cooperative association against association for the return of membership monies paid to become member of cooperative did not accrue, for purposes of three-year statute of limitations, until association resold member's dwelling unit; settlement statement received by member when he purchased the unit stated that a "seller may only receive funds as they are paid to the resale account by purchaser," implying that membership monies would not be returned to a departing cooperative member until a purchaser for the member's unit was found. *St. James Mut. Homes v. Andrade*, 2008, 951 A.2d 766. *Limitation Of Actions* ⇨ 46(6)

On facts presented to Court of Appeals, the limitation period on each missed monthly payment for services rendered under contract between governmental relations firm and cable television facilities operator began to run separately, such that statute of limitations did not bar firm's action to recover installment payments that accrued within three years prior to firm's filing of action alleging that operator breached contract in which firm agreed to assist operator in obtaining government contracts. *Keefe Co. v. Americable Intern., Inc.*, 2000, 755 A.2d 469, answer to certified question conformed to 219 F.3d 669, 343 U.S.App.D.C. 9. *Limitation Of Actions* ⇨ 51(2)

24. — Actions not specially prescribed, limitation applicable to action

District of Columbia's three-year statute of limitations for actions for which a limitations period was not otherwise specially prescribed, rather than 90-day limitations period applicable to substantive IDEA challenges to claims for attorney fees arising under the IDEA, governed claim brought by parent of disabled student, seeking to recover attorney fees and costs incurred during administrative proceedings brought under the IDEA. *Davidson v. District of Columbia*, 2010, 736 F.Supp.2d 115. *Schools* ⇨ 155.5(5)

Plaintiff's claim of intentional infliction of emotional distress against District of Columbia arising from police officers' alleged conduct in handcuffing her and removing money from her pocket to pay debt they believed she owed was governed by District's one-year limitations period for tort claims, rather than residuary three-year limitations period; plaintiff's claim was based on same events as her assault, battery, false arrest, and false imprisonment claims. *Zhi Chen v. Monk*, 2010, 701 F.Supp.2d 32. *Limitation Of Actions* ⇨ 31

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Because plaintiffs claimed that defendants acted "without probable cause," their "abuse of process" claim against police officer was actually a malicious prosecution claim for limitations purposes. *Rynn v. Jaffe*, 2006, 457 F.Supp.2d 22. *Malicious Prosecution* ⇨ 38; *Malicious Prosecution* ⇨ 44

Thirty-day statute of limitations applicable under District of Columbia law to substantive appeals, and not three-year statute of limitations applicable under District of Columbia law to actions whose limitation was not otherwise specially prescribed, applied to issue of attorney fees arising from attorney's representation of parents of disabled students in administrative proceedings against District of Columbia public schools to secure rights under Individuals with Disabilities Education Act (IDEA); fee petition was ancillary to underlying dispute before school, and shorter limitations period would assist in preventing resolution of merits from being sidetracked by negotiations over fees, which would be to detriment of students. *Abraham v. District of Columbia*, 2004, 338 F.Supp.2d 113. *Schools* ⇨ 155.5(2.1)

District of Columbia's three-year statute of limitations for causes of action "not otherwise specifically prescribed" applied to action brought by minor children who had initiated successful administrative claims under Individuals with Disabilities Act (IDEA), seeking to collect outstanding attorney fees and costs, since action for attorney fees was not akin to appeal from administrative decision. *Kaseman v. District of Columbia*, 2004, 329 F.Supp.2d 20. *Schools* ⇨ 155.5(5)

District of Columbia's three-year statute of limitations for filing negligence claims, not Virginia's two-year statute of limitations for survival actions, applied to survivor action brought in the District of Columbia by estate and family of bicycling fundraiser participant against the organizer of the fundraiser and medical providers that treated participant in Virginia before her death; statute of limitations was not part of a survival action and thus was not substantive under Virginia law. *Jaffe v. Pallotta Teamworks*, 2003, 276 F.Supp.2d 102, reversed and remanded 374 F.3d 1223, 362 U.S.App.D.C. 398. *Death* ⇨ 8

Because there is no specific statute limiting time for filing claim for intentional infliction of emotional distress in District of Columbia, independent action for intentional infliction of emotional distress is subject to three-year residual limitation period. *Thompson v. Jasas Corp.*, 2002, 212 F.Supp.2d 21. *Limitation Of Actions* ⇨ 31

Residuary three-year limitation period under District of Columbia law applies only if intentional infliction of emotional distress claim is not intertwined with any of causes of action for which period of limitation is specifically provided. *Thompson v. Jasas Corp.*, 2002, 212 F.Supp.2d 21. *Limitation Of Actions* ⇨ 31

Three-year statute of limitations period applied to action brought on behalf of minor children by either their parents, guardians, or court-appointed

education advocates to recover interests for alleged late payments of their attorney fees that were voluntarily paid by District of Columbia for legal services provided by their attorneys during administrative proceedings initiated under Individuals with Disabilities Education Act (IDEA); there was no District of Columbia statute of limitations that specifically controlled when actions for attorney fees had to be initiated, and therefore three year limitation period, which covered causes of actions not otherwise specifically prescribed applied. *Akinseye v. District of Columbia*, 2002, 193 F.Supp.2d 134, reversed 339 F.3d 970, 358 U.S.App.D.C. 56. Schools ⇨ 155.5(2.1)

Former FBI agent's claims against media commentator, alleging that he conspired with others to injure agent in his person and property on account of agent's lawful discharge of his duties, and on account of agent's having provided testimony in court of law, were subject to three-year default statute of limitations under District of Columbia law. *Sculimbrene v. Reno*, 2001, 158 F.Supp.2d 8. Conspiracy ⇨ 16

District of Columbia's three-year general statute of limitations applied to *Bivens* action against police officers, by claimant alleging that his arrest for distributing leaflets on Capitol grounds violated his First and Fourth Amendment rights; Constitutional violations were not sufficiently similar to any intentional torts covered by one-year statute suggested by officers as alternative. *Lederman v. U.S.*, 2001, 131 F.Supp.2d 46, remanded 291 F.3d 36, 351 U.S.App.D.C. 386. United States ⇨ 50.20

Three-year statute of limitations applies for tort claims under District of Columbia law. *The Plan Committee v. PricewaterhouseCoopers, LLP*, 2005, 335 B.R. 234. Torts ⇨ 139

Former employee's negligence action against employer following assault by coemployee was governed by three year limitations period applicable to negligence actions, rather than one year limitations period applicable to assault actions, where employee alleged distinct negligence claim apart from her assault claim by alleging that employer's knowledge of and failure to heed risk that coemployee posed to employee proximately caused assault. *Reaves-Bey v. Karr*, 2004, 840 A.2d 701. Labor And Employment ⇨ 2806

Residual three-year statutory limitations period, for claims not otherwise specifically prescribed, rather than four-year limitations provision for breach of a sales contract under Uniform Commercial Code (UCC), applied to consumer's class action against cable company for unreasonably high late penalties, brought pursuant to Consumer Protection Procedures Act (CPPA). *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Antitrust And Trade Regulation ⇨ 353

Three-year limitations period on apartment building purchaser's tortious interference with contract claim against tenants' association and the association's attorneys was not tolled by association's litigation of quiet title action, when tenants sought to purchase building themselves. *Beard v.*

Edmondson and Gallagher, 2002, 790 A.2d 541. Limitation Of Actions ⇨ 105(2)

25. Accrual of right of action or defense—In general

Under District of Columbia law, salvager's breach of contract claim against Republic of Colombia accrued, and three year limitations period began to run, no later than date it discovered that Republic had denied it permission to perform full salvage operations at ancient shipwreck site and that Republic had declared itself owner of entire shipwreck site. *Sea Search Armada v. Republic of Colombia*, 2011, 2011 WL 5027640. Limitation of Actions ⇨ 95(9)

Under District of Columbia law, discovery rule did not apply to toll three-year period for salvager to bring breach of contract action against Republic of Colombia related to agreement for recovery of sunken treasure from ancient shipwreck site, since salvager knew of alleged breach when Colombian Parliament had enacted law eliminating all of salvager's property rights in treasure, and salvager had previously filed suit against Republic on identical claim in Republic of Colombia. *Sea Search Armada v. Republic of Colombia*, 2011, 2011 WL 5027640. Limitation of Actions ⇨ 95(9)

Under District of Columbia law, salvager's claim against Republic of Colombia for conversion of sunken treasure at ancient shipwreck site accrued, and three-year limitations period began to run, on date Republic first attempted to take full ownership of shipwreck site. *Sea Search Armada v. Republic of Colombia*, 2011, 2011 WL 5027640. Limitation of Actions ⇨ 55(5)

Under District of Columbia law, borrower's claim that mortgage brokerage and mortgage broker breached their fiduciary duties by failing to provide him with best available mortgage rate, failing to provide written document describing service and agreement, failing to disclose yield spread premium (YSP) fee and broker's involvement in loan, charging fees for services not reasonably related to services performed, misrepresenting reason interest note offered by lender was higher than borrower expected, and failing to disclose mandatory prepayment penalty provision of original loan offer accrued, pursuant to discovery rule, when borrower signed final loan documents, where settlement statement stated that YSP would be paid "by the Lender" to broker. *Newland v. Aurora Loan Services, LLC*, 2011, 2011 WL 3664302. Limitation of Actions ⇨ 100(12)

Under District of Columbia law, borrower's claim that mortgage lender, mortgage servicer, employer of substituted trustees, mortgagee of record, mortgage brokerages, and mortgage brokers fraudulently conspired to provide borrower with higher interest rate than he should have received and violated Consumer Protection Act accrued when borrower signed final loan documents, despite borrower's contention that his broker never disclosed existence or conditions of yield spread premium (YSP), where settlement statement stated that YSP would be paid "by the

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Lender" to broker, and all material terms and conditions of mortgage transaction, as well as required disclosures, were provided to borrower when he closed his loan. *Newland v. Aurora Loan Services, LLC*, 2011, 2011 WL 3664302. Limitation of Actions ⇨ 95(16); Limitation of Actions ⇨ 100(12)

Consumer's cause of action against beverage maker, alleging that beverage maker's use of high fructose corn syrup in its purportedly "all natural" beverages violated District of Columbia Consumer Protection Procedures Act (CPPA), accrued under discovery rule, thereby triggering three-year limitations period under CPPA, at time he purchased each beverage; the ingredient label on the purchased drinks provided consumer with all of the information he needed to reasonably question the veracity of beverage maker's "all natural" claim and its significance under the Act and, therefore, because consumer had inquiry, even if not actual, notice of a claim at the time that he purchased each beverage, he could not rely on the discovery rule to save those long-expired claims. *Silvious v. Snapple Beverage Corp.*, 2011, 793 F.Supp.2d 414. Limitation of Actions ⇨ 95(16)

Former prisoner's claims relating to reversal of his convictions and release from prison due to *Brady* violations, including constitutional violations pursuant to *Bivens* and § 1983, against various federal and District of Columbia officials accrued pursuant to the discovery rule under District of Columbia law on the date prisoner was released as the date prisoner discovered his injuries. *Sykes v. U.S. Attorney for the Dist. of Columbia*, 2011, 770 F.Supp.2d 152, affirmed 2011 WL 5515568. Limitation of Actions ⇨ 95(3); Limitation of Actions ⇨ 95(15)

Under District of Columbia law, once either actual or inquiry notice of injury is present, the statute of limitations begins to run as a matter of law. *Reeves v. Eli Lilly and Co.*, 2005, 368 F.Supp.2d 11. Limitation Of Actions ⇨ 95(1)

Under the District of Columbia's discovery rule, a cause of action accrues, for statute of limitations purposes, when the plaintiff has knowledge of, or by the exercise of reasonable diligence should have knowledge of: (1) the existence of the injury; (2) its cause in fact; and (3) some evidence of wrongdoing. *Lee v. Wolfson*, 2003, 265 F.Supp.2d 14. Limitation Of Actions ⇨ 95(1)

Statute of limitations began to accrue when children actually received payments and at that time realized that interest had not been included in action brought on behalf of minor children by either their parents, guardians, or court appointed education advocates to recover interests for alleged late payments of their attorneys' fees that were voluntarily paid by District of Columbia for legal services provided by their attorneys during administrative proceedings initiated under Individuals with Disabilities Education Act (IDEA); all of children were paid fees they demanded and were only seeking interests for alleged late payment of those fees. *Akinseye v. District of Columbia*, 2002,

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193 F.Supp.2d 134, reversed 339 F.3d 970, 358 U.S.App.D.C. 56. Limitation Of Actions ⇨ 58(1)

Generally, statute of limitations begins to run when plaintiff knows both existence and cause of his injury. *Advantage Health Plan, Inc. v. Knight*, 2001, 139 F.Supp.2d 108. Limitation Of Actions ⇨ 95(1)

Under District of Columbia law, for purposes of the statute of limitations, a cause of action accrues when the plaintiff has either actual or inquiry notice of her cause of action. *Smith v. Brown & Williamson Tobacco Corp.*, 2000, 108 F.Supp.2d 12. Limitation Of Actions ⇨ 95(1)

Under District of Columbia law, "actual notice," for limitations purposes, is that notice which a plaintiff actually possesses; "inquiry notice" is that notice which a plaintiff would have possessed after due investigation. *Smith v. Brown & Williamson Tobacco Corp.*, 2000, 108 F.Supp.2d 12. Limitation Of Actions ⇨ 95(1)

Under District of Columbia law, a plaintiff is charged with "inquiry notice" of a claim when she knew of: (1) an injury; (2) its cause in fact; and (3) some evidence of wrongdoing by defendants. *Smith v. Brown & Williamson Tobacco Corp.*, 2000, 108 F.Supp.2d 12. Limitation Of Actions ⇨ 95(1)

Under District of Columbia law, inquiry notice is the standard for all cases in which discovery rule applies, regardless of the presence or absence of fraud, or the characterization of that fraud; critical question in assessing the existence vel non of inquiry notice is whether plaintiff exercised reasonable diligence under the circumstances in acting or failing to act on whatever information was available to him. *The Plan Committee v. PricewaterhouseCoopers, LLP*, 2005, 335 B.R. 234. Limitation Of Actions ⇨ 95(1); Limitation Of Actions ⇨ 100(11)

Under District of Columbia's discovery rule, fact that plaintiff did not comprehend the full extent of all elements of a cause of action does not matter to commencement of limitations period, for the law of limitations requires only that plaintiff have inquiry notice of the existence of a cause of action. *The Plan Committee v. PricewaterhouseCoopers, LLP*, 2005, 335 B.R. 234. Limitation Of Actions ⇨ 95(1)

Pursuant to District of Columbia law, it is only necessary, under discovery rule, that plaintiff have inquiry notice of the existence of cause of action for the statute of limitations to begin to run; therefore, plaintiff can be charged with inquiry notice of his claims even if he is not actually aware of each essential element of his cause of action. *The Plan Committee v. PricewaterhouseCoopers, LLP*, 2005, 335 B.R. 234. Limitation Of Actions ⇨ 95(1)

When the discovery rule applies under District of Columbia law, cause of action accrues when plaintiff knows or by the exercise of reasonable diligence should know (1) of the injury, (2) its cause in fact, and (3) of some evidence of wrongdoing. *The Plan Committee v. Pricewaterhouse-*

Coopers, LLP, 2005, 335 B.R. 234. Limitation Of Actions ⇨ 95(1)

Four factors are considered in determining whether the discovery rule is applied to a professional malpractice cause of action under District of Columbia law: (1) the justifiable reliance of plaintiff on the professional skills of those hired to perform their work, (2) the latency of the deficiency, (3) the balance between plaintiff's interest in having the protection of the law and the possible prejudice to defendant, and (4) the interest in judicial economy. *The Plan Committee v. PricewaterhouseCoopers, LLP*, 2005, 335 B.R. 234. Limitation Of Actions ⇨ 95(10.1)

Under District of Columbia law, in cases in which the relationship between the fact of injury and the alleged tortious conduct is obscure, court determines when the claim accrues through application of the discovery rule. *The Plan Committee v. PricewaterhouseCoopers, LLP*, 2005, 335 B.R. 234. Limitation Of Actions ⇨ 95(1)

Under District of Columbia law, when the fact of an injury can be readily determined, a claim accrues at the time plaintiff suffers an alleged injury. *The Plan Committee v. PricewaterhouseCoopers, LLP*, 2005, 335 B.R. 234. Limitation Of Actions ⇨ 43

Vendor's mere placement of funds in an escrow account pending resolution of a dispute over a commission fee with real estate broker did not relieve broker of his obligation to file suit seeking fees within the applicable limitations period for contract-based claims and did not affect the running of the statute of limitations, under the discovery rule, on broker's claims, where broker was aware of vendor's decision not to pay him a commission. *Medhin v. Hailu*, 2011, 26 A.3d 307. Limitation Of Actions ⇨ 95(9)

The statute of limitations begins to run when a claim accrues, and a cause of action accrues when its elements are present, so that the plaintiff could maintain a successful suit. *News World Communications, Inc. v. Thompson*, 2005, 878 A.2d 1218. Limitation Of Actions ⇨ 43

Under the "discovery rule," a cause of action accrues for limitations purposes when the plaintiff has either actual notice of her cause of action or is deemed to be on inquiry notice because if she had met her duty to act reasonably under the circumstances in investigating matters affecting her affairs, such an investigation, if conducted, would have led to actual notice. *Harris v. Ladner*, 2003, 828 A.2d 203. Limitation Of Actions ⇨ 95(1)

Accrual of a cause of action is determined on a case-by-case basis. *In re Estate of Green*, 2003, 816 A.2d 14. Limitation Of Actions ⇨ 43

As a general rule, an action accrues and the statute of limitations begins to run when the suit could first be initiated. *In re Estate of Green*, 2003, 816 A.2d 14. Limitation Of Actions ⇨ 43

"Inquiry notice," which causes the claim to accrue for limitations purposes, is that notice which a plaintiff would have possessed after due investigation. *Doe v. Medlantic Health Care Group, Inc.*,

2003, 814 A.2d 939. Limitation Of Actions ⇨ 95(1)

The critical question in assessing the existence of inquiry notice, which causes the claim to accrue for limitations purposes, is whether the plaintiff exercised reasonable diligence under the circumstances in acting or failing to act on whatever information was available to him. *Doe v. Medlantic Health Care Group, Inc.*, 2003, 814 A.2d 939. Limitation Of Actions ⇨ 95(2)

The relevant circumstances in assessing the existence of inquiry notice, which causes the claim to accrue for limitations purposes, include, but are not limited to, the conduct and misrepresentations of the defendant, and the reasonableness of the plaintiff's reliance on the defendant's conduct and misrepresentations. *Doe v. Medlantic Health Care Group, Inc.*, 2003, 814 A.2d 939. Limitation Of Actions ⇨ 95(1)

Even where a plaintiff might know, or be deemed to know, of wrongdoing on the part of one defendant, accrual of his action, for limitations purposes, against another, unknown defendant responsible for the same harm is not automatic, unless the two defendants were closely connected, such as in a superior-subordinate relationship. *Doe v. Medlantic Health Care Group, Inc.*, 2003, 814 A.2d 939. Limitation Of Actions ⇨ 95(1)

At the latest, a cause of action accrues for limitations purposes when the plaintiff knows or by the exercise of reasonable diligence should know (1) of the injury, (2) its cause in fact, and (3) of some evidence of wrongdoing; under this rule, the plaintiff does not have carte blanche to defer legal action indefinitely if she knows or should know that she may have suffered injury and that the defendant may have caused her harm. *Beard v. Edmondson and Gallagher*, 2002, 790 A.2d 541. Limitation Of Actions ⇨ 95(1)

All damages need not be sustained, or even identified, for the cause of action to accrue; any appreciable and actual harm flowing from the defendant's conduct is sufficient. *Beard v. Edmondson and Gallagher*, 2002, 790 A.2d 541. Limitation Of Actions ⇨ 43

As a general rule, where the fact of an injury can be readily determined, a claim accrues for purposes of the statute of limitations at the time the injury actually occurs. *Mullin v. Washington Free Weekly, Inc.*, 2001, 785 A.2d 296. Limitation Of Actions ⇨ 43

When the relationship between the fact of injury and alleged tortious conduct is obscure, a court determines when the claim accrues through application of the discovery rule, and the statute of limitations will not run until plaintiffs know or reasonably should have known that they suffered injury due to the defendants' wrongdoing. *Mullin v. Washington Free Weekly, Inc.*, 2001, 785 A.2d 296. Limitation Of Actions ⇨ 95(3)

Generally, the cause of action accrues, and the statute of limitations begins to run, at the time of the occurrence of a judicially recognizable injury or event constituting a breach of duty; the statute

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commences at that time even though the plaintiff is unaware of the accrual of his or her cause of action. *Mullin v. Washington Free Weekly, Inc.*, 2001, 785 A.2d 296. Limitation Of Actions ⇨ 43; Limitation Of Actions ⇨ 95(1)

In general, an actionable claim accrues, and the statute of limitations begins to run, when a suit thereon could first be maintained to a successful conclusion. *Bembery v. District of Columbia*, 2000, 758 A.2d 518. Limitation Of Actions ⇨ 43

25.5. — Severable claims, accrual of right of action or defense

In action brought by former employee of non-profit public interest government watchdog organization against outside general counsel of organization and general counsel's law firm for breach of contract and breach of fiduciary duty, employee's claims arising from defendant's allegedly improper disclosure of information during his divorce proceeding, and arising from his departure from organization, were severable for statute of limitations purposes under District of Columbia law; claims were distinct allegations of breach of duty, were separated by time and stood on their own as claims. *Klayman v. Barmak*, 2009, 634 F.Supp.2d 56. Limitation Of Actions ⇨ 46(6); Limitation Of Actions ⇨ 99(1)

26. — Contracts in general, accrual of right of action or defense

Limitations periods for retired police officers' claims against District of Columbia, alleging that the District failed to pay them basic and overtime compensation for fulfilling the duties of "detective sergeants," in violation of District of Columbia law and the Fair Labor Standards Act (FLSA), began to run when their paychecks did not include compensation for performing the duties of detective sergeants during the preceding pay period. *Abate v. District of Columbia*, 2009, 659 F.Supp.2d 156. Limitation Of Actions ⇨ 58(1)

Under District of Columbia law, the date that the plaintiff discovered that her husband was not buried in the plot for which she had contracted with the cemetery for his burial was the accrual date for her breach of contract claim against cemetery and funeral director, and for her intertwined claims against them of negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of implied covenant of good faith, conversion, and professional malpractice, for purposes of three-year limitation period. *Tolbert v. National Harmony Memorial Park*, 2007, 520 F.Supp.2d 209. Limitation Of Actions ⇨ 95(4.1); Limitation Of Actions ⇨ 95(9); Limitation Of Actions ⇨ 95(10.1)

Under District of Columbia law, under certain circumstances, the statute of limitations may be tolled where the fact of injury was not readily apparent and indeed might not become apparent until several years after the incident causing the injury had occurred. *Washington Metropolitan Area Transit Authority v. Quik Serve Foods, Inc.*, 2005, 402 F.Supp.2d 198. Limitation Of Actions ⇨ 95(1)

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Under District of Columbia law, shipper's claims against carrier for breach of contract and negligence accrued upon expiration of period during which carrier agreed to store goods, rather than on date carrier arranged for its delegates to transport and store goods, where contract called for storage of goods, and goods were sold when carrier failed to ensure payment to delegatee storage facility. *Byrd v. Admiral Moving and Storage, Inc.*, 2005, 355 F.Supp.2d 234. Limitation Of Actions ⇨ 46(11); Limitation Of Actions ⇨ 55(2)

Under District of Columbia law, the statute of limitations on express or implied contract claims begins to run from the date a contract is breached. *Allison v. Howard University*, 2002, 209 F.Supp.2d 55. Limitation Of Actions ⇨ 46(6); Limitation Of Actions ⇨ 49(1)

Statute of limitations on law student's contract claim against law school for expelling him in violation of representations in school brochures accrued on date that formal decision to expel student was made and communicated to him, and thus suit was time barred under District of Columbia law when not brought within three years of that date. *Allison v. Howard University*, 2002, 209 F.Supp.2d 55. Limitation Of Actions ⇨ 95(9)

Any breach of contract claim arising from representations made through course syllabus about how student's grade would be determined accrued on date that student was notified of his failing grade in course, and thus was time-barred under District of Columbia law when not brought within three years of that date. *Allison v. Howard University*, 2002, 209 F.Supp.2d 55. Limitation Of Actions ⇨ 95(9)

Generally, under District of Columbia law, accrual for contract cases occurs when the contract is first breached. *The Plan Committee v. PricewaterhouseCoopers, LLP*, 2005, 335 B.R. 234. Limitation Of Actions ⇨ 46(6)

Any contract-based claim that real estate broker had to commission, which was subject of vendor's action seeking declaration that the funds belonged to vendor, accrued under discovery rule at time when vendor represented to broker that he would pay not pay any commission, and therefore the three-year statute of limitations for contract-based claims barred any claim of broker to commission. *Medhin v. Hailu*, 2011, 26 A.3d 307. Limitation Of Actions ⇨ 95(9)

Any contract-based claim that real estate broker had to commission, which was subject of vendor's action seeking declaration that the funds belonged to vendor, accrued under discovery rule at time when vendor represented to broker that he would not pay any commission, and therefore the three-year statute of limitations for contract-based claims barred any claim of broker to commission. *Medhin v. Hailu*, 2011, 26 A.3d 307. Limitation Of Actions ⇨ 95(9)

For purposes of determining when home mortgagors' claim for breach of contract accrued, for limitations purposes, based on mortgagee's breach of its obligation, for which no time for performance

was specified in the settlement agreement in mortgage foreclosure action, to advise credit reporting agencies that the foreclosure action had been mistakenly initiated, the reasonable time for performance would not be construed as being as long as two years and ten months after execution of agreement, so that mortgagors' claim for breach of contract, asserted five years and ten months after execution of agreement, would be timely under three-year limitations period for breach of contract claim; the appearance of a foreclosure in a consumer credit report could have serious consequences, e.g., it could result in denial of a loan application. *Murray v. Wells Fargo Home Mortg.*, 2008, 953 A.2d 308. Limitation Of Actions ⇨ 46(6)

A cause of action for breach of contract accrues, and the statute of limitations begins to run, at the time of the breach. *Murray v. Wells Fargo Home Mortg.*, 2008, 953 A.2d 308. Limitation Of Actions ⇨ 46(6)

Three-year limitations period governing former Catholic school principal's breach of contract claim against archdiocese began to run when double one-month's salary allegedly promised under contract was not paid. *Pardue v. Center City Consortium Schools of Archdiocese of Washington, Inc.*, 2005, 875 A.2d 669, certiorari denied 126 S.Ct. 619, 546 U.S. 1003, 163 L.Ed.2d 506. Limitation Of Actions ⇨ 46(6)

Former university professor did not show that her time-barred breach of contract claims against university and its employees satisfied the requirements of the "discovery rule" so as to toll the running of the statute of limitations; professor knew of her injury (the denial of tenure for undisclosed reasons despite her apparent qualifications without an interim opportunity to petition for reconsideration) and threatened to sue university more than three years before she ultimately filed her complaint, and fact that professor might not have learned certain details until later, such as dean's alleged duplicity in damning her application with faint praise after telling her that he would support it, was not enough to excuse her inaction. *Harris v. Ladner*, 2003, 828 A.2d 203. Limitation Of Actions ⇨ 95(9)

In an action for breach of a contract or lease, the statute of limitations runs from the time of the breach. *Bembery v. District of Columbia*, 2000, 758 A.2d 518. Limitation Of Actions ⇨ 46(6)

Where a debt is payable in independent installments, the right of action accrues upon each as it matures. *Bembery v. District of Columbia*, 2000, 758 A.2d 518. Limitation Of Actions ⇨ 51(2)

Where a suit is brought to recover installment obligations then due and owing, complete relief need not be sought in that action as to future payments; to the contrary, successive suits may be brought as new installments come due. *Keefe Co. v. Americable Intern., Inc.*, 2000, 755 A.2d 469, answer to certified question conformed to 219 F.3d 669, 343 U.S.App.D.C. 9. Action ⇨ 53(3)

27. — Insurance contracts, accrual of right of action or defense

Applicable three-year statute of limitations on ERISA benefits claim by District of Columbia attorney formerly employed full-time with association began to run on date she first executed independent contractor agreement with association so she could work part-time; independent contractor agreement clearly communicated to attorney that she was ineligible to receive benefits under association's retirement plans. *Walker v. Pharmaceutical Research and Mfrs. of America*, 2006, 439 F.Supp.2d 103, motion to amend denied 461 F.Supp.2d 52. Limitation Of Actions ⇨ 95(14)

Insured railroad's claims against excess liability insurers for indemnity and breach of contract did not accrue until railroad made first payment of \$16,100,000 in partial satisfaction of judgment entered against it in underlying personal injury action when policies dictated that insurers were not obligated to indemnify railroad unless and until it made payment in excess of \$10,000,000, and therefore claims were not barred by District of Columbia's three-year statute of limitations for contract actions. *National R.R. Passenger Corp. v. Lexington Ins. Co.*, 2005, 357 F.Supp.2d 287. Limitation Of Actions ⇨ 56(2)

Under District of Columbia law, suit by survivors of automobile crash, seeking declaration of coverage against insurer of restaurant that allegedly served alcoholic beverages to intoxicated driver who struck survivors' vehicle, accrued, for limitations purposes, when insurer denied coverage. *Saylab v. Harford Mut. Ins. Co.*, 2003, 271 F.Supp.2d 112. Limitation Of Actions ⇨ 66(6)

29. — Agency contracts, accrual of right of action or defense

Under District of Columbia law, a statute of limitations may be equitably tolled when the party claiming the protection of the statute of limitations has employed affirmative acts to fraudulently conceal either the existence of a claim or facts forming the basis of a cause of action. *Johnson v. Long Beach Mortg. Loan Trust 2001-4*, 2006, 451 F.Supp.2d 16. Limitation Of Actions ⇨ 104(1)

Under District of Columbia's discovery rule, mortgagor's fraud claims against mortgage broker would not have accrued on the date of loan's settlement if mortgage broker had a fiduciary duty to mortgagor; if mortgage broker owed mortgagor a duty to represent her in her dealings with lender and investigate any potential wrongdoing, a reasonable fact-finder could decide that mortgagor did not fail to make a reasonable inquiry into the alleged wrongs herself. *Johnson v. Long Beach Mortg. Loan Trust 2001-4*, 2006, 451 F.Supp.2d 16. Limitation Of Actions ⇨ 100(7)

30. — Labor and employment claims, accrual of right of action or defense

Claims by African-American members and officers of District of Columbia Fire and Emergency Medical Services (DCFEMS) appropriately arose under Civil Rights Act of 1991 where they alleged that District "interfered with the performance of

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an existing contract [and] denied the plaintiffs the benefits of their contract with the city," causing "a sever [sic] loss of pay and prestige," and fact they had to enforce their § 1981 claims through remedy outlined in § 1983 did not change effective statute of limitations period for cause of action from four to three years. *Hamilton v. District of Columbia*, 2012, 2012 WL 1130855. Civil Rights ⇨ 1383

Causes of action for claims for breaches of contract and fiduciary duty, brought by former employee of non-profit public interest government watchdog organization arising from its claims that outside general counsel of organization and general counsel's law firm improperly disclosed information related to employee's divorce in previous litigation accrued, and three-year limitations period began to run, when alleged disclosures occurred in prior litigation. *Klayman v. Barmak*, 2009, 634 F.Supp.2d 56. Limitation Of Actions ⇨ 46(6); Limitation Of Actions ⇨ 99(1)

Under District of Columbia law, fact that arbitration of District of Columbia correctional officer's wrongful termination claim was still pending precluded officer from filing court action alleging such claim, on grounds that she failed to exhaust her administrative remedies under District of Columbia Comprehensive Merit Personnel Act (CMPA). *Johnson v. District of Columbia*, 2005, 368 F.Supp.2d 30, affirmed 552 F.3d 806, 384 U.S.App. D.C. 153. District Of Columbia ⇨ 7

Statute of limitation began to run on unjust enrichment claim brought by proposer of magazine idea against newspaper at the time proposer's last service was rendered to newspaper and compensation was wrongfully withheld; by that time she had done a significant amount of work on behalf of, and induced by, the newspaper regarding proposed magazine and the newspaper informed her she would not be compensated. *News World Communications, Inc. v. Thompson*, 2005, 878 A.2d 1218. Limitation Of Actions ⇨ 49(2)

A claim for unjust enrichment only accrues when the enrichment becomes unjust; the statute of limitations starts to run upon the occurrence of the wrongful act giving rise to a duty of restitution. *News World Communications, Inc. v. Thompson*, 2005, 878 A.2d 1218. Limitation Of Actions ⇨ 49(1)

The cause of action for unjust enrichment accrues upon presentment and subsequent rejection of a bill for services, or as soon as the services were rendered. *News World Communications, Inc. v. Thompson*, 2005, 878 A.2d 1218. Limitation Of Actions ⇨ 49(2)

Employee's hostile work environment claim brought under the District of Columbia Human Rights Act (DCHRA) was timely filed because employee's testimony demonstrated that supervisor's sexually improper behavior occurred within one year of when he filed his claim, and thus, employee's claim was not barred by DCHRA's one-year statute of limitations. *Psychiatric Institute of Washington v. District of Columbia Com'n on Hu-*

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man Rights, 2005, 871 A.2d 1146. Civil Rights ⇨ 1708

A hostile work environment claim, by its very nature, involves repeated conduct based on the cumulative effect of individual acts, and thus, to satisfy statute of limitations, only one act contributing to the claim need occur within the statutory period. *Psychiatric Institute of Washington v. District of Columbia Com'n on Human Rights*, 2005, 871 A.2d 1146. Limitation Of Actions ⇨ 58(1)

One-year statute of limitations period for former employee's action for discriminatory and retaliatory discharge began to run at the time employee was terminated, where employee testified that her own immediate conclusion after being discharged was that her termination was discriminatory. *Brown v. National Academy of Sciences*, 2004, 844 A.2d 1113. Limitation Of Actions ⇨ 95(15)

Mere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination. *Brown v. National Academy of Sciences*, 2004, 844 A.2d 1113. Limitation Of Actions ⇨ 58(1)

Employee's cause of action for wrongful termination accrued on date that he was notified that his employment would end, rather than on last day of his employment; at time employee received notice, there was nothing to suggest that employer's decision was tentative or otherwise subject to change. *Stephenson v. American Dental Ass'n*, 2002, 789 A.2d 1248. Limitation Of Actions ⇨ 95(14)

30.5. — Retirement and Disability benefits, accrual of right of action or defense

Statute of limitations on claim for long-term disability benefits under ERISA plan accrued when participant was advised that her benefits had been terminated. *Pettaway v. Teachers Ins. and Annuity Ass'n of America*, 2008, 547 F.Supp.2d 1. Limitation Of Actions ⇨ 66(6)

32. — Landlord and tenant, accrual of right of action or defense

Three-year statute of limitations began to run on lessor's claim against the District of Columbia, for breach of overtime charge provision of lease of two townhouses, when the District received successive monthly bills for extra rent, rather than 15 months later when lessor received District's letter expressly rejecting overtime charges. *Bembery v. District of Columbia*, 2000, 758 A.2d 518. Limitation Of Actions ⇨ 46(6)

33. — Covenants and conditions, accrual of right of action or defense

Under District of Columbia law, three-year statute of limitations for plaintiff's conversion claim against former landlord began to run when he tried to return to his office to collect his personal belongings, but was denied access. *Curtis v. Lanier*, 2008, 535 F.Supp.2d 89. Limitation Of Actions ⇨ 55(5)

34. — Instruments for payment of money, accrual of right of action or defense

Home mortgagors and mortgagee, as signers of settlement agreement in mortgage foreclosure action, did not adopt the seal of the notaries public as their own, as would make the agreement an instrument under seal, so that 12-year limitations period for action brought on instrument under seal would be applicable, in mortgagors' action alleging that mortgagee breached the agreement by failing to advise credit reporting agencies that the foreclosure action had been mistakenly initiated; mortgagors' signatures were affixed before notary seals were placed on the document, the language above the notary stamps merely certified that mortgagors each signed the agreement in front of a notary public, without suggesting anything further, and it was unclear whether the mortgagee had signed the agreement after, rather than before, the mortgagors had signed the agreement and the notary seals had been placed on the document. *Murray v. Wells Fargo Home Mortg.*, 2008, 953 A.2d 308. Limitation Of Actions ⇨ 22(2)

When the instrument is made by an individual, the word "seal" next to the signature is, standing alone, sufficient to create a sealed instrument entitled to the 12-year statute of limitations for an action brought on an instrument under seal. *Murray v. Wells Fargo Home Mortg.*, 2008, 953 A.2d 308. Limitation Of Actions ⇨ 22(2)

Settlement agreement in mortgage foreclosure action was not an instrument under seal, and thus, 12-year limitations period for action brought on instrument under seal was inapplicable, in home mortgagors' action alleging that mortgagee breached the agreement by failing to advise credit reporting agencies that the foreclosure action had been mistakenly initiated; top of signature page for one mortgagor merely contained a recitation that "IN WITNESS WHEREOF, we have hereunto set our hands and seal," the word "seal" did not appear next to signatures of either mortgagor, and the settlement agreement, as presented to the court in mortgagors' action alleging breach of the agreement, did not contain the signature of any representative of mortgagee and did not contain a seal on behalf of mortgagee. *Murray v. Wells Fargo Home Mortg.*, 2008, 953 A.2d 308. Limitation Of Actions ⇨ 22(2)

Twelve-year statute of limitations for action on instrument under seal did not apply to suit by the District of Columbia Water and Sewer Authority (WASA) for breach of contract with the word "seal" only on the signature page; no seal was placed anywhere on the contract or signature page, the signatures were not notarized, and the word "seal" did not appear next to any signatures. *District of Columbia Water and Sewer Authority v. Delon Hampton & Associates*, 2004, 851 A.2d 410. District Of Columbia ⇨ 36

35. — Implied contracts, accrual of right of action or defense

Home mortgagors' claim against mortgagee for breach of duty of good faith and fair dealing,

relating to mortgagee's allegedly premature institution of foreclosure proceedings, listing of incorrect cure amount, and refusal to correct the cure amount and postpone the foreclosure sale, accrued, for limitations purposes, when the notice of foreclosure was issued; at such time, the fact of an injury could be readily determined. *Murray v. Wells Fargo Home Mortg.*, 2008, 953 A.2d 308. Limitation Of Actions ⇨ 95(9)

The statute of limitations begins to run, on a claim of breach of the implied covenant of good faith and fair dealing, when the implied covenant is breached. *Murray v. Wells Fargo Home Mortg.*, 2008, 953 A.2d 308. Limitation Of Actions ⇨ 47(1)

The three-year statute of limitations, for actions on a contract that is express or implied, applies to an action for breach of the implied covenant of good faith and fair dealing. *Murray v. Wells Fargo Home Mortg.*, 2008, 953 A.2d 308. Limitation Of Actions ⇨ 21(1)

37. — Accounts, accrual of right of action or defense

An "account stated" is a promise by a debtor to pay a stated sum of money which the parties had agreed upon as the amount due; the doctrine of account stated presupposes an absolute acknowledgment or admission of a certain sum due, or an adjustment of accounts between the parties, the striking of a balance, and an assent, express or implied, to the correctness of the balance. *Eagle Maintenance Services, Inc. v. District of Columbia Contract Appeals Bd.*, 2006, 893 A.2d 569. Account Stated ⇨ 1; Account Stated ⇨ 5

Special master's cause of action on first personal representative's surety bond accrued, and five-year statute of limitations began to run, when court approved final accounting of estate. *In re Estate of Green*, 2003, 816 A.2d 14. Limitation Of Actions ⇨ 47(3)

39. — Torts in general, accrual of right of action or defense

Under the Washington Metropolitan Area Transit Authority (WMATA) Compact, as amended in 1976, a metro transit police officer engaged in a criminal investigation and an arrest has the same powers and limitations as a member of the District of Columbia Metropolitan Police Department, and consequently has only qualified immunity, not absolute immunity, for his torts, though the WMATA itself is cloaked with absolute immunity for torts arising in the exercise of governmental functions. *Griggs v. Washington Metropolitan Area Transit Authority*, C.A.D.C.2000, 232 F.3d 917, 344 U.S.App.D.C. 28. District Of Columbia ⇨ 7; District Of Columbia ⇨ 25

Homeowner's tort claims alleging fraud, contract breach, negligence, and intentional infliction of emotional distress (IIED) accrued, and the District of Columbia's three-year limitations period began to run, on settlement date of her note to mortgage lender. *George v. Bank of America N.A.*, 2011, 2011 WL 5304054. Limitation Of Actions ⇨ 46(6);

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Limitation of Actions ⇨ 55(4); Limitation of Actions ⇨ 99(1)

Cause of action of parent of disabled student who allegedly prevailed in administrative proceeding brought under the IDEA, to recover attorney fees and costs incurred during the proceeding, accrued, and three-year statute of limitations under District of Columbia law began to run, when hearing officer issued determination in favor of parent, qualifying her as the prevailing party. *Davidson v. District of Columbia*, 2010, 736 F.Supp.2d 115. Schools ⇨ 155.5(5)

Under District of Columbia law, three-year limitations period began to run on female police officer's claim for intentional infliction of emotional distress against police department when department allegedly misrepresented that she failed to comply with the qualification requirements for her firearm and filed adverse action against her. *Moore v. District of Columbia*, 2010, 686 F.Supp.2d 88, affirmed in part, vacated in part and remanded 2011 WL 5514057. Limitation Of Actions ⇨ 55(4)

Under District of Columbia law, as predicted by district court, patient's claim for replevin against manufacturer of prosthetic hip accrued, and statute of limitations began to run, when patient requested return of prosthesis from manufacturer, rather than when manufacturer took possession of device following patient's surgery. *Hunt v. DePuy Orthopaedics, Inc.*, 2009, 636 F.Supp.2d 23. Limitation Of Actions ⇨ 66(14)

For purposes of District of Columbia statute of limitations, tort cause of action accrues when party knows or, through exercise of reasonable diligence should have known, of injury suffered as result of wrongdoing. *American Federation of Teachers, AFL-CIO v. Bullock*, 2008, 539 F.Supp.2d 161, reconsideration granted, vacated 605 F.Supp.2d 251, appeal dismissed 2009 WL 5125394. Limitation Of Actions ⇨ 95(3)

Under District of Columbia law, situations where the discovery exception tolls the statute of limitations include: fraud, medical malpractice, legal malpractice, and fraudulent concealment. *Washington Metropolitan Area Transit Authority v. Quik Serve Foods, Inc.*, 2005, 402 F.Supp.2d 198. Limitation Of Actions ⇨ 95(11); Limitation Of Actions ⇨ 95(12); Limitation Of Actions ⇨ 100(1); Limitation Of Actions ⇨ 104(1)

In cases where the relationship between the fact of injury and the tortious conduct is obscure, District of Columbia law provides for the application of a discovery rule and the statute of limitations will not run until plaintiff knows or reasonably should know that an injury has been suffered due to the defendant's wrongdoing. *Lee v. Wolfson*, 2003, 265 F.Supp.2d 14. Limitation Of Actions ⇨ 95(1)

Parking garage patron who was struck by unattended vehicle could not have automatically been expected to know that wrongful conduct on the part of vehicle manufacturer could have caused release of vehicle's parking brake at time of her injury, particularly when no defect in parking

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brake was revealed during investigation of accident by police or patron's expert; thus, relationship between patron's injury and manufacturer's alleged wrongdoing was obscure at time of injury and such that discovery rule would be applied to patron's tort claims and statute of limitations for such tort claims did not begin to run until patron knew, or should have known, of possibility of manufacturer's wrongdoing. *Lee v. Wolfson*, 2003, 265 F.Supp.2d 14. Limitation Of Actions ⇨ 95(4.1)

Under District of Columbia law, statute of limitations on tort claim ordinarily begins to run when plaintiff sustains tortious injury, but under discovery rule, it begins to run when plaintiff knows or reasonably should know that cause of action exists. *Jacobsen v. Oliver*, 2002, 201 F.Supp.2d 93. Limitation Of Actions ⇨ 55(1); Limitation Of Actions ⇨ 95(3)

Under District of Columbia's discovery rule, cause of action accrues when plaintiff has knowledge or by exercise of reasonable diligence should have knowledge of (1) existence of injury; (2) its cause in fact; and (3) some evidence of wrongdoing. *Jacobsen v. Oliver*, 2002, 201 F.Supp.2d 93. Limitation Of Actions ⇨ 95(1)

Under District of Columbia law, two-year limitations period for bringing tort claim against the United States under the Federal Tort Claims Act (FTCA) was not tolled by continuous treatment doctrine, where child's injury, including brain damage and quadriplegia, and its severity were apparent almost immediately following his birth. *Lewis v. U.S.*, 2001, 173 F.Supp.2d 52, vacated in part on reconsideration 290 F.Supp.2d 1. Limitation Of Actions ⇨ 55(3)

The statute of limitations for malicious prosecution begins to run when the underlying action against a plaintiff terminates, not when the underlying action is initiated. *Wiggins v. State Farm Fire and Cas. Co.*, 2001, 153 F.Supp.2d 16. Limitation Of Actions ⇨ 55(1)

Under District of Columbia law, health maintenance organization's (HMO) claims against officers of hospital for tortious interference with contract and negligence, arising from hospital's billing of HMO's members to recoup costs not paid by HMO, accrued on date HMO sent letter to hospital complaining of billing practice; HMO was on notice of injury and hospital's alleged wrongful conduct in causing injury. *Advantage Health Plan, Inc. v. Knight*, 2001, 139 F.Supp.2d 108. Limitation Of Actions ⇨ 95(3); Limitation Of Actions ⇨ 95(7)

If District of Columbia continuing tort doctrine, under which cause of action did not accrue until tortious activity ceased, applied to health maintenance organization's (HMO) claims against officers of hospital for tortious interference with contract and negligence arising from hospital's billing of HMO's members to recoup costs not paid by HMO, statute of limitations began to run on date last bills were mailed to members. *Advantage Health Plan, Inc. v. Knight*, 2001, 139 F.Supp.2d 108. Limitation Of Actions ⇨ 55(6)

Statute of limitations applicable to a claim for malicious prosecution begins to run when the underlying action against a plaintiff terminates, not when the underlying action is initiated. *Parker v. Grand Hyatt Hotel*, 2000, 124 F.Supp.2d 79. Limitation Of Actions ⇨ 55(1)

When the discovery rule applies, a cause of action accrues, for limitations purposes, when the claimant knows or by the exercise of reasonable diligence should know of: (1) the injury; (2) its cause in fact; and (3) some evidence of wrongdoing. *Doe v. Medlantic Health Care Group, Inc.*, 2003, 814 A.2d 939. Limitation Of Actions ⇨ 95(1)

Patient did not have inquiry notice that hospital's receptionist was source of his co-workers' knowledge of his AIDS diagnosis, and thus, limitations period did not commence for action against hospital for breach of confidential relationship; receptionist, who was also co-worker of patient at her other job, denied having spread the rumors, four days after another co-worker had identified receptionist as source of rumors, and other co-worker's responses to patient's questions regarding receptionist's denial led patient to believe that other co-worker's statement that receptionist had been source of rumors was typical joking by other co-worker. *Doe v. Medlantic Health Care Group, Inc.*, 2003, 814 A.2d 939. Limitation Of Actions ⇨ 95(3)

The statute of limitations on a tort claim ordinarily begins to run when the plaintiff sustains a tortious injury, or—if the so-called “discovery rule” applies because the relationship between the fact of injury and the alleged tortious conduct is obscure—when the plaintiff knows or reasonably should know that the cause of action exists. *Beard v. Edmondson and Gallagher*, 2002, 790 A.2d 541. Limitation Of Actions ⇨ 55(1); Limitation Of Actions ⇨ 95(3)

In general, a “one-action rule” applies to limitation periods on tort actions: the plaintiff must bring a single suit for all present and future damages flowing from a discrete tortious act as soon as he or she becomes aware of some injury on which to base the suit. *Beard v. Edmondson and Gallagher*, 2002, 790 A.2d 541. Limitation Of Actions ⇨ 95(1)

40. — Fraud, accrual of right of action or defense

Under District of Columbia law, former law student's claims of fraud about anonymous grading systems and law school exams accrued, and three-year statute of limitations began to run, while student was enrolled at law schools; student had knowledge of the alleged fraud before graduation. *Richards v. Duke University*, 2007, 480 F.Supp.2d 222. Limitation Of Actions ⇨ 100(1)

Alleged misrepresentations by non-profit organization, that organization was organized under laws of Belgium and that Belgium was the place from which the organization published its analytical reports, were not specifically directed to Serbian businessman and his affiliated companies, and thus, District of Columbia's lulling doctrine did not

provide a basis for precluding organization from asserting statute of limitations defense to businessman's and companies' defamation claims; alleged misrepresentations were made to the general public, in organization's published analytical reports and organization's web site. *Jankovic v. International Crisis Group*, 2006, 429 F.Supp.2d 165, affirmed in part, reversed in part and remanded 494 F.3d 1080, 377 U.S.App.D.C. 434. Limitation Of Actions ⇨ 13

Fraudulent misrepresentation claim brought by product developer against pest control company, alleging that company was selling product incorporating developer's technology, accrued upon developer's discovery of purported illegal conduct, pursuant to District of Columbia discovery rule; parties' non-adversarial relationship would not have prompted developer to investigate company's consumer products catalog to uncover alleged misappropriations of technology. *McQueen v. Woodstream Corp.*, 2007, 244 F.R.D. 26. Limitation Of Actions ⇨ 100(12)

41. — Libel and slander, accrual of right of action or defense

Under District of Columbia law, defamation occurs, for purposes of one-year limitations period, on publication and the statute of limitations runs from the date of publication. *Di Lella v. University of Dist. of Columbia David A. Clarke School of Law*, 2008, 570 F.Supp.2d 1. Limitation Of Actions ⇨ 55(1)

Under District of Columbia law, one-year statute of limitations on law student's defamation claim against school and school officials began to run no later than when dean shared information about student's honor code violation with a representative of another school. *Di Lella v. University of Dist. of Columbia David A. Clarke School of Law*, 2008, 570 F.Supp.2d 1. Limitation Of Actions ⇨ 55(1)

Under District of Columbia law, one-year statute of limitations on arrestee's defamation claim against retailer for allegedly providing false information to the police in connection with arrestee's unpaid purchases began to run when retailer made the allegedly defamatory statement to the police department. *Curtis v. Lanier*, 2008, 535 F.Supp.2d 89. Limitation Of Actions ⇨ 55(1)

Under District of Columbia law, one-year statute of limitations on arrestee's libel and defamation claim against detective for allegedly lying to obtain an arrest warrant began to run when detective signed the affidavit in support of an arrest warrant, since detective's statements were defamatory on their face. *Curtis v. Lanier*, 2008, 535 F.Supp.2d 89. Limitation Of Actions ⇨ 55(1)

Under District of Columbia law, where the alleged statement is defamatory on its face, a plaintiff's reputation is damaged immediately upon publication and one-year statute of limitations begins to run at once. *Curtis v. Lanier*, 2008, 535 F.Supp.2d 89. Limitation Of Actions ⇨ 55(1)

Under District of Columbia law, defamation occurs on publication, and the statute of limitations

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runs from the date of publication. *Nevius v. Africa Inland Mission Intern.*, 2007, 511 F.Supp.2d 114. Limitation Of Actions ⇨ 55(1)

Under District of Columbia law, statute of limitations on missionary's defamation claim against missionary organization began to run on date of publication, when organization's regional supervisor allegedly accused missionary, in presence of others, of mishandling organization funds and negligence in caring for children at home she established. *Nevius v. Africa Inland Mission Intern.*, 2007, 511 F.Supp.2d 114. Limitation Of Actions ⇨ 55(1)

Limitations period for defamation action, under District of Columbia law, against co-worker, who allegedly made statements that African-American male employee was harassing her, began to run when co-worker made statements. *Stith v. Chadbourne & Parke, LLP.*, 2001, 160 F.Supp.2d 1. Limitation Of Actions ⇨ 55(1)

Limitations period, under District of Columbia law, for bringing defamation action against employer for its statements to Equal Employment Opportunity Commission (EEOC) began to run when statements were made. *Stith v. Chadbourne & Parke, LLP.*, 2001, 160 F.Supp.2d 1. Limitation Of Actions ⇨ 55(1)

Application of discovery rule, under District of Columbia law, tolled limitations period in which African-American employee could bring defamation action against employer for its statements made to Equal Employment Opportunity Commission (EEOC) during its investigation of employee's race and gender discrimination charge; employee had no reason to know that employer made allegedly defamatory statements until employee read letter from employer to EEOC. *Stith v. Chadbourne & Parke, LLP.*, 2001, 160 F.Supp.2d 1. Limitation Of Actions ⇨ 95(6)

Defamation occurs on publication, and the statute of limitations runs from the date of publication; where a statement is defamatory on its face, the plaintiff's reputation is damaged immediately upon publication. *Mullin v. Washington Free Weekly, Inc.*, 2001, 785 A.2d 296. Libel And Slander ⇨ 32; Limitation Of Actions ⇨ 55(1)

Cause of action accrued, and one-year statute of limitations on defamation action brought by subject of weekly newspaper article began to run, at time of publication, not at time of discovery; injury to subject's reputation occurred at time of publication. *Mullin v. Washington Free Weekly, Inc.*, 2001, 785 A.2d 296. Limitation Of Actions ⇨ 55(1); Limitation Of Actions ⇨ 95(6)

In defamation cases, at least where mass media are involved, the fact of injury can be readily determined, and thus any resulting defamation claims will accrue for purposes of the statute of limitations at the time the injury actually occurs, i.e., publication. *Mullin v. Washington Free Weekly, Inc.*, 2001, 785 A.2d 296. Limitation Of Actions ⇨ 55(1)

Defamation cause of action against two non-media defendants accrued, and one-year statute of

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limitations began to run, at the same time as for newspaper itself, where non-media defendants' statements were those that subsequently appeared in newspaper article. *Mullin v. Washington Free Weekly, Inc.*, 2001, 785 A.2d 296. Limitation Of Actions ⇨ 55(1)

41.5. — Malicious prosecution, accrual of right of action or defense

Under District of Columbia law, one year statute of limitations for plaintiff to bring malicious prosecution action began to run when the two criminal cases giving rise to the claim were dismissed. *Curtis v. Lanier*, 2008, 535 F.Supp.2d 89. Limitation Of Actions ⇨ 55(1)

Under District of Columbia law, the statute of limitations for malicious prosecution begins from the time that the underlying criminal or civil action is disposed of in favor of the plaintiff in the malicious prosecution case. *Curtis v. Lanier*, 2008, 535 F.Supp.2d 89. Limitation Of Actions ⇨ 55(1)

41.7. — False arrest, accrual of right of action or defense

Under District of Columbia law, one-year statute of limitations for claims of false arrest and false imprisonment begins to run the moment that the plaintiff suffers injury, that is, when the individual is arrested or imprisoned. *Curtis v. Lanier*, 2008, 535 F.Supp.2d 89. Limitation Of Actions ⇨ 55(1)

Under District of Columbia law, one-year statute of limitations for arrestee's claims of false arrest and false imprisonment against police chief and detectives, which arose from two separate arrests, began to run on dates he was arrested. *Curtis v. Lanier*, 2008, 535 F.Supp.2d 89. Limitation Of Actions ⇨ 55(1)

41.9. — Conspiracy, accrual of right of action or defense

Under District of Columbia law, three-year statute of limitations for arrestee's conspiracy claim against police and private parties arising from two separate arrests began to run no later than the date of his second arrest. *Curtis v. Lanier*, 2008, 535 F.Supp.2d 89. Limitation Of Actions ⇨ 55(1)

42. — Legal malpractice, accrual of right of action or defense

In the District of Columbia, the statute of limitations for a legal malpractice claim is three years. *De May v. Moore & Bruce, LLP*, 2008, 584 F.Supp.2d 170. Attorney And Client ⇨ 129(1)

Cause of action for legal malpractice accrued, and three-year statute of limitations under District of Columbia law began to run, when client's application to change his immigration status was denied and he chose to retain new counsel. *Mawalla v. Hoffman*, 2008, 569 F.Supp.2d 253. Limitation Of Actions ⇨ 55(3)

Under District of Columbia law, the continuous representation rule did not apply to toll the three-year statute of limitations on client's claim alleging that law firm and attorneys committed malpractice when they failed to advise him that his federal workers' compensation had been calculated incor-

rectly; particular matter in issue, client's application to Department of Labor's Office of Workers' Compensation Programs (OWCP) for benefits, ended when OWCP informed client that its ruling was final and appealable, and client did not have contact with firm or attorneys for some 25 years afterwards. *Gallucci v. Schaffer*, 2007, 507 F.Supp.2d 85. Limitation Of Actions ⇨ 55(3)

Under District of Columbia law, three-year statute of limitations for client's action against law firm and attorneys, alleging that they committed malpractice when they failed to advise him that his workers' compensation for injury sustained while an apprentice at the Bureau of Engraving and Printing had been calculated incorrectly, began to run no later than date on which client, through a representative, sent a letter to the Department of Labor's Office of Workers' Compensation Programs (OWCP) seeking increased rate of compensation. *Gallucci v. Schaffer*, 2007, 507 F.Supp.2d 85. Limitation Of Actions ⇨ 95(11)

Claim that attorney was negligent for not accepting settlement offered to former client accrued when settlement was rejected four years prior to former client's action, and thus was barred under District of Columbia's three-year statute of limitations. *Nwachukwu v. Karl*, 2002, 223 F.Supp.2d 60. Limitation Of Actions ⇨ 55(3)

Client's legal malpractice claim against attorney, relating to dismissal, as time-barred under insurance contract, of her underlying action against long-term-disability (LTD) insurer which had denied her claim for LTD benefits, accrued, for limitations purposes, at the latest when client knew that she had been injured, by attorney's conduct in allowing contractual deadline to expire without filing suit, through dismissal of underlying action, so that the discovery rule no longer delayed the accrual of the malpractice claim, and when she replaced the attorney with new counsel, so that the continuous representation rule no longer delayed the accrual of the malpractice claim. *Bleck v. Power*, 2008, 955 A.2d 712. Limitation Of Actions ⇨ 55(3); Limitation Of Actions ⇨ 95(11)

Under the continuous representation rule, a client's legal malpractice claim does not accrue, for limitations purposes, until the attorney's representation concerning the particular matter in issue is terminated, even if the client knows before then that her attorney has made an injurious error. *Bleck v. Power*, 2008, 955 A.2d 712. Limitation Of Actions ⇨ 55(3)

Under the discovery rule, a plaintiff's right of action in a legal malpractice case does not accrue, for limitations purposes, until the plaintiff has knowledge of, or by the exercise of reasonable diligence should have knowledge of: (1) the existence of the injury; (2) its cause in fact; and (3) some evidence of wrongdoing. *Bleck v. Power*, 2008, 955 A.2d 712. Limitation Of Actions ⇨ 95(11)

An action for legal malpractice accrues, for limitations purposes, when the plaintiff has sustained some "injury," which encompasses any loss or im-

pairment of a right, remedy, or interest, or the imposition of a liability. *Bleck v. Power*, 2008, 955 A.2d 712. Limitation Of Actions ⇨ 55(3)

At the earliest, an action for legal malpractice accrues, for limitations purposes, when the plaintiff has sustained some injury, even if the injury occurs prior to the time at which the precise amount of damages can be ascertained. *Bleck v. Power*, 2008, 955 A.2d 712. Limitation Of Actions ⇨ 55(3)

Cause of action for legal malpractice accrued, and three-year limitations period began to run, when client, as representative of estate, demonstrated knowledge of harm suffered by estate on account of attorney's actions, as spelled out in client's pleadings in lawsuit that had been filed more than three years before the complaint in instant action. *Burtoff v. Faris*, 2007, 935 A.2d 1086. Limitation Of Actions ⇨ 95(11)

Client's legal malpractice claim against first attorney who had represented her in underlying medical malpractice action had not yet accrued, for limitations purposes, on the day client terminated attorney's representation because she felt attorney had failed to properly prosecute the medical malpractice claim and had vastly compromised it through inadequate performance, where client had not yet suffered actual injury from the attorney's conduct, and instead had suffered only an uncertain or inchoate injury; the medical malpractice claim had not yet been resolved by trial, settlement, or other means, and client still had hope, however faint, that matters could be turned around, especially if successor counsel could reopen discovery. *Wagner v. Sellinger*, 2004, 847 A.2d 1151, on remand 2005 WL 4721634. Limitation Of Actions ⇨ 55(3); Limitation Of Actions ⇨ 95(11)

Under the "continuous representation rule," a legal malpractice claim will not accrue, for limitations purposes, until the representation is terminated, even though the client's knowledge of an injury might otherwise have triggered the statute of limitations earlier. *Wagner v. Sellinger*, 2004, 847 A.2d 1151, on remand 2005 WL 4721634. Limitation Of Actions ⇨ 55(3)

43. — Negligence, accrual of right of action or defense

Complaint alleging failure to control police dog during arrest sounded in negligence, for which there is a three-year statute of limitations under District of Columbia law, as well as in intentional tort, for which there is a one-year statute of limitations. *Griggs v. Washington Metropolitan Area Transit Authority*, C.A.D.C.2000, 232 F.3d 917, 344 U.S.App.D.C. 28. Municipal Corporations ⇨ 747(3)

The statute of limitations' discovery rule is applicable, in the District of Columbia, to negligence cases where a plaintiff is aware of the injury but lacks knowledge of its cause or of wrongdoing by the defendant. *Lee v. Wolfson*, 2003, 265 F.Supp.2d 14. Limitation Of Actions ⇨ 95(3)

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Sufficient evidence supported finding that company was on inquiry notice more than three years before it filed suit that it had a negligence claim against certified public accountant (C.P.A.) for manner of preparation of tax returns, thus supporting submission of statute of limitations defense to jury; IRS agent had examined company's receivables to extent of preparing specific tax calculations, a document penned by the company's accountant established that he possessed the agent's memorandum setting forth adjustments to company's past tax returns and knew that the IRS had zeroed in on the company for incorrectly reporting its unbilled receivables, and the accountant also discovered that the C.P.A. had failed to notice in his review of company's split-off corporation that the corporation's tax returns were incorrect. *Ideal Electronic Sec. Co., Inc. v. Brown*, 2003, 817 A.2d 806. Limitation Of Actions ⇨ 199(1)

44. — Injury to property, accrual of right of action or defense

Date on which property owner's claim ripened under the discovery rule was not jury question in suit against Water and Sewer Authority (WASA) for delivering corrosive water and causing pinhole leaks in, and damaging, the pipes and other plastic fixtures in buildings. *Cornier v. District of Columbia Water and Sewer Authority*, 2008, 959 A.2d 658. Limitation Of Actions ⇨ 199(1)

Three-year statute of limitations applicable to property owner's suit against Water and Sewer Authority (WASA) for delivering corrosive water and causing pinhole leaks in, and damaging, the pipes and other plastic fixtures in buildings began to run by the time he wrote his accusatory letters, not when expert gave opinion on the connection between the pipe problem and the water, more than two months after owner filed his lawsuit; when landowner wrote his letters, he indisputably knew or should have known about the cause. *Cornier v. District of Columbia Water and Sewer Authority*, 2008, 959 A.2d 658. Limitation Of Actions ⇨ 95(7)

45. — Injuries to person, accrual of right of action or defense

Claims for intentional and negligent infliction of emotional distress that were asserted by arrestee and his wife were intertwined with malicious prosecution claim and thus were timely under District of Columbia law, inasmuch as claims were brought within one year after final charge against arrestee was dropped, which was within limitations period for malicious prosecution claim. *Parker v. Grand Hyatt Hotel*, 2000, 124 F.Supp.2d 79. Limitation Of Actions ⇨ 55(4)

For purpose of statute of limitations, the benefit of tolling a medical malpractice claim under the discovery rule ends, or perhaps more accurately is eclipsed, once a plaintiff is on inquiry notice as to all defendants. *Berkow v. Lucy Webb Hayes Nat. Training School for Deaconesses and Missionaries Conducting Sibley Memorial Hosp.*, 2004, 841 A.2d 776. Limitation Of Actions ⇨ 95(12)

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Cause of action for medical malpractice accrued, and three-year limitations period began to run, under inquiry notice rule, against physicians who mistakenly concurred in pathologist's misdiagnosis, and cardiologist whose diagnostic failure allowed malignancy to grow substantially before pathologist discovered it, albeit inaccurately, when patient first learned that pathologist misdiagnosed patient's condition. *Berkow v. Lucy Webb Hayes Nat. Training School for Deaconesses and Missionaries Conducting Sibley Memorial Hosp.*, 2004, 841 A.2d 776. Limitation Of Actions ⇨ 95(12)

Proof of the injured party's knowledge of some wrongdoing on the part of the physician is required before it can be said that the period of limitations commenced on his or her cause of action for medical malpractice. *Hardi v. Mezzanotte*, 2003, 818 A.2d 974. Limitation Of Actions ⇨ 95(12)

45.5. — Civil rights, accrual of right of actions or defense

Under District of Columbia law, three-year limitations period began to run on female police officer's §§ 1981 and §§ 1983 claims against police department when department's discriminatory and retaliatory conduct occurred, even if the effects of the alleged conduct did not surface until later. *Moore v. District of Columbia*, 2010, 686 F.Supp.2d 88, affirmed in part, vacated in part and remanded 2011 WL 5514057. Limitation Of Actions ⇨ 58(1)

District of Columbia's three-year statute of limitations applicable to plaintiff's §§ 1983 action arising from two separate arrests began to run no later than the date of plaintiff's second arrest. *Curtis v. Lanier*, 2008, 535 F.Supp.2d 89. Limitation Of Actions ⇨ 58(1)

46. — Continuing injury or treatment, accrual of right of action or defense

Trustees' alleged mismanagement of finances of Armenian genocide museum was not continuing violation, for limitations purposes. *Armenian Assembly of America, Inc. v. Cafesjian*, 2010, 692 F.Supp.2d 20. Limitation Of Actions ⇨ 43

Non-profit organization's former legal client failed to allege specific acts that demonstrated a continuing violation, and failed to allege that he was unaware of organization's and its officers' alleged appropriation of his likeness until after statute of limitations had run, as would support application of doctrine of continuing violations to former client's claims against organization and officers, and thus claims were barred by one year statute of limitations under District of Columbia law governing invasion of privacy claims. *Paul v. Judicial Watch, Inc.*, 2008, 543 F.Supp.2d 1. Limitation Of Actions ⇨ 55(1); Limitation Of Actions ⇨ 95(3)

Under District of Columbia law, the continuous treatment doctrine applies to toll a statute of limitations when an injury or the extent of an injury is not apparent, due to the treating physician's representations or reassurances. *Lewis v. U.S.*, 2001, 173 F.Supp.2d 52, vacated in part on reconsidera-

tion 290 F.Supp.2d 1. Limitation Of Actions ⇨ 55(3)

Under the "continuing treatment rule," the limitation period for filing suit for claims arising from a doctor's treatment will be tolled until the doctor ceases to treat the patient in the specific matter at hand. *Berkow v. Lucy Webb Hayes Nat. Training School for Deaconesses and Missionaries Conducting Sibley Memorial Hosp.*, 2004, 841 A.2d 776. Limitation Of Actions ⇨ 55(3)

Continuing treatment rule did not toll three-year limitations period for filing malpractice suit against cardiologist whose diagnostic failure allegedly allowed malignancy to grow substantially before it was discovered, albeit inaccurately, by another physician, where cardiologist did not continue to treat patient for lack of femoral pulse signals that, according to patient, should have alerted cardiologist to the existence of a physical condition, such as a cancerous growth, and there was no evidence that cardiologist's continuing treatment of patient's cardiac condition embraced continuing treatment germane to the malignancy. *Berkow v. Lucy Webb Hayes Nat. Training School for Deaconesses and Missionaries Conducting Sibley Memorial Hosp.*, 2004, 841 A.2d 776. Limitation Of Actions ⇨ 55(3)

A "continuing tort" can be established for statute of limitations purposes by showing (1) a continuous and repetitious wrong, (2) with damages flowing from the act as a whole rather than from each individual act, and (3) at least one injurious act within the limitation period. *Beard v. Edmondson and Gallagher*, 2002, 790 A.2d 541. Limitation Of Actions ⇨ 55(6)

Once the plaintiff has been placed on notice of an injury and the role of the defendants' wrongful conduct in causing it, the policy disfavoring stale claims makes application of the continuous tort doctrine inappropriate. *Beard v. Edmondson and Gallagher*, 2002, 790 A.2d 541. Limitation Of Actions ⇨ 55(6); Limitation Of Actions ⇨ 95(3)

When the plaintiff is or should be aware that he or she is being injured by a continuing tort, the statute of limitations begins to run; the plaintiff then may recover only for injuries attributable to the part of the continuing tort that was committed within the limitations period immediately preceding the date on which suit is brought. *Beard v. Edmondson and Gallagher*, 2002, 790 A.2d 541. Limitation Of Actions ⇨ 55(6); Limitation Of Actions ⇨ 95(3)

48. — Statutory liability, accrual of right of action or defense

Under District of Columbia law, in a contract action, the statute of limitations generally expires three years after the accrual of the action. *Washington Metropolitan Area Transit Authority v. Quik Serve Foods, Inc.*, 2005, 402 F.Supp.2d 198. Limitation Of Actions ⇨ 21(1)

51. Ignorance of cause of action—In general

Under District of Columbia law, plaintiff is deemed to be on inquiry notice, triggering running

of statute of limitations, when, if she had met her duty to act reasonably under circumstances in investigating matters affecting her affairs, such investigation, if conducted, would have led to actual notice. *Gassmann v. Eli Lilly and Co.*, 2005, 407 F.Supp.2d 203. Limitation Of Actions ⇨ 95(1)

Under discovery rule of District of Columbia statute of limitations, plaintiff's claim does not accrue, and limitations period does not begin to run, until plaintiff knows, or by exercise of reasonable diligence should know, of: (1) injury; (2) its cause in fact; and (3) some evidence of wrongdoing. *Gassmann v. Eli Lilly and Co.*, 2005, 407 F.Supp.2d 203. Limitation Of Actions ⇨ 95(1)

Discovery rule of District of Columbia statute of limitations is applicable when relationship between fact of injury and alleged tortious conduct is obscure. *Gassmann v. Eli Lilly and Co.*, 2005, 407 F.Supp.2d 203. Limitation Of Actions ⇨ 95(3)

Under District of Columbia law, where the discovery rule is applicable, in order for the cause of action to accrue for limitations purposes, one must know, or by the exercise of reasonable diligence should know, (1) of the injury, (2) its cause in fact and (3) of some evidence of wrongdoing. *Reeves v. Eli Lilly and Co.*, 2005, 368 F.Supp.2d 11. Limitation Of Actions ⇨ 95(1)

Under District of Columbia law, statute of limitations may be tolled until plaintiff realizes the impact of the harm he suffered. *Nwachukwu v. Karl*, 2002, 223 F.Supp.2d 60. Limitation Of Actions ⇨ 95(1)

Under discovery rule, statute of limitations does not run with respect to specific claim until plaintiff discovers or reasonably should have discovered facts necessary to assert that claim. *Stith v. Chadbourne & Parke, LLP.*, 2001, 160 F.Supp.2d 1. Limitation Of Actions ⇨ 95(1)

The discovery rule emerged to redress situations in which the fact of injury was not readily apparent and indeed might not become apparent for several years after the incident causing injury had occurred. *Wiggins v. State Farm Fire and Cas. Co.*, 2001, 153 F.Supp.2d 16. Limitation Of Actions ⇨ 95(1)

For a cause of action to accrue where the discovery rule is applicable, one must know or by the exercise of reasonable diligence should know of the injury, its cause in fact, and of some evidence of wrongdoing. *Brown v. National Academy of Sciences*, 2004, 844 A.2d 1113. Limitation Of Actions ⇨ 95(1)

A claim usually accrues for statute of limitations purposes when injury occurs, but in cases where the relationship between the fact of injury and the alleged tortious conduct is obscure, the court determines when the claim accrues through application of the "discovery rule," i.e., the statute of limitations will not run until plaintiffs know or reasonably should have known that they suffered injury due to the defendants' wrongdoing. *Doe v. Medlantic Health Care Group, Inc.*, 2003, 814 A.2d 939. Limitation Of Actions ⇨ 95(1)

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52. — Lack of diligence, ignorance of cause of action

If the injury is such that it should reasonably be discovered at the time it occurs, then the plaintiff should be charged with discovery of the injury, and the limitations period should commence, at that time. *Wiggins v. State Farm Fire and Cas. Co.*, 2001, 153 F.Supp.2d 16. Limitation Of Actions ⇨ 95(2)

53. — Nature of harm or damage, ignorance of cause of action

Judgment debtor who brought action against judgment creditor for malicious prosecution, alleging that creditor wrongfully obtained default judgment against him, causing him credit problems, was not entitled to tolling of limitations period for malicious prosecution under discovery rule, even though debtor did not know that judgment would continue to cause credit problems in future, where debtor had actual knowledge of such credit problems prior to date that the limitations period began to run. *Wiggins v. State Farm Fire and Cas. Co.*, 2001, 153 F.Supp.2d 16. Limitation Of Actions ⇨ 95(3)

Under District of Columbia law, the nature of a cause of action determines the quantum of knowledge necessary to start the running of the statute of limitations. *Smith v. Brown & Williamson Tobacco Corp.*, 2000, 108 F.Supp.2d 12. Limitation Of Actions ⇨ 95(1)

54. — Injuries to person, ignorance of cause of action

For purposes of a computing period of statute of limitations in a medical malpractice action, a plaintiff's knowledge an injury, its cause, and some evidence of wrongdoing, includes not only actual notice but also inquiry notice. *Berkow v. Lucy Webb Hayes Nat. Training School for Deaconesses and Missionaries Conducting Sibley Memorial Hosp.*, 2004, 841 A.2d 776. Limitation Of Actions ⇨ 95(12)

Under the discovery rule, a medical malpractice claim does not accrue until the patient has discovered or reasonably should have discovered all of the essential elements of her possible cause of action, i.e., duty, breach, causation and damages. *Hardi v. Mezzanotte*, 2003, 818 A.2d 974. Limitation Of Actions ⇨ 95(12)

For a cause of action to accrue where the discovery rule is applicable, one must know or by the exercise of reasonable diligence should know (1) of the injury, (2) its cause in fact, and (3) of some evidence of wrongdoing; inquiry notice of the possible cause of action will suffice to start the running of the clock. *Wagner v. Georgetown University Medical Center*, 2001, 768 A.2d 546. Limitation Of Actions ⇨ 95(1)

55. — Diseases or drug-related injuries, ignorance of cause of action

Under District of Columbia law, former smoker's purported awareness of her addiction to cigarettes, the health hazards of cigarettes, and of manufacturers' silence with respect to those haz-

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ards was not sufficient evidence of wrongdoing to charge her with "inquiry notice" of fraud claim at time of her throat cancer diagnosis, because it provided smoker with no indication that manufacturers were deliberately concealing information in order to deceive public. *Smith v. Brown & Williamson Tobacco Corp.*, 2000, 108 F.Supp.2d 12. Limitation Of Actions ⇨ 100(11)

One is deemed to be on "inquiry notice" of an injury, its cause, and some evidence of wrongdoing, for purposes of a computing period of statute of limitations in a medical malpractice action, if, in meeting one's responsibility to act reasonably under the circumstances in investigating matters affecting one's affairs, such an investigation, if conducted, would have led to actual notice. *Berkow v. Lucy Webb Hayes Nat. Training School for Deaconesses and Missionaries Conducting Sibley Memorial Hosp.*, 2004, 841 A.2d 776. Limitation Of Actions ⇨ 95(12)

56. — Libel and slander, ignorance of cause of action

Under District of Columbia law, even if discovery rule applied to toll limitations period in defamation action, tolling was not appropriate, under rule, for employee's claims against co-worker, where employee knew about co-worker's allegedly defamatory statement before limitations period expired, and even if he did not know the precise contents of statement, he knew that allegedly defamatory statement was made, of its publication to employer and police, and that he was terminated as result of statement. *Stith v. Chadbourne & Parke, LLP.*, 2001, 160 F.Supp.2d 1. Limitation Of Actions ⇨ 95(6)

57. — Injuries to property, ignorance of cause of action

Trespass and nuisance claims against cemetery and funeral director by plaintiff whose son was buried at cemetery, based on allegations that a significant amount of water was on and beneath the burial plot, were not conclusively time-barred on the face of the complaint, and thus, the district court would not dismiss those claims on ground that three-year limitations period provided for in District of Columbia statute had run; complaint alleged that although the water trespass and nuisance trespass occurred three years before complaint was filed, plaintiff did not know of the water nuisance until two months later, and did not know of the water trespass until the filing of the action. *Tolbert v. National Harmony Memorial Park*, 2007, 520 F.Supp.2d 209. Limitation Of Actions ⇨ 180(2)

58. — Title or property interest, ignorance of cause of action

District of Columbia's discovery rule applied in determining accrual of mortgagor's claims of fraud, violations of the D.C. Consumer Protection Act, D.C. Consumer Protection Procedures Act, and D.C. usury statute, conspiracy to defraud, and aiding and abetting the deception of mortgagor, negligence, and negligent supervision, which all stemmed from either direct participation in or

failure to properly prevent mortgage broker from allegedly defrauding mortgagor and charging excessive fees. *Johnson v. Long Beach Mortg. Loan Trust* 2001-4, 2006, 451 F.Supp.2d 16. Limitation Of Actions ⇨ 95(3); Limitation Of Actions ⇨ 95(16); Limitation Of Actions ⇨ 100(1)

59. — Contracts or warranties, ignorance of cause of action

Representative should have known of construction company's culpability in bid rigging scheme, triggering statute of limitations on fraud claim under District of Columbia law, as result of nature of her duties, which involved negotiating resolution of contracting matters that signaled possibility of bid rigging. *Elemery v. Philipp Holzmann A.G.*, 2008, 533 F.Supp.2d 116. Limitation Of Actions ⇨ 100(12)

Even assuming purported purchaser of undivided one-half interest in residential real property was not aware deed was not in fact executed by one of the purported vendors until ruling of Office of the Secretary of the District of Columbia to that effect, purchaser was required to file her action for breach of contract within three-year statute of limitations, rather than 13 years after ruling. *La-Prade v. Rosinsky*, 2005, 882 A.2d 192. Limitation Of Actions ⇨ 95(9)

60. — Professional malpractice in general, ignorance of cause of action

Under District of Columbia law, the statute of limitations applicable to a claim for malicious prosecution begins to run when the underlying action against a plaintiff terminates. *Rogers v. Johnson-Norman*, 2006, 466 F.Supp.2d 162. Limitation Of Actions ⇨ 55(1)

The statute of limitations for a professional negligence claim cannot begin to run until the first day on which discovery will show that the plaintiff had a bona fide professional negligence lawsuit based on injury, meaning a legally cognizable claim that would survive a motion to dismiss; absent injury, there is no lawsuit. *Wagner v. Sellinger*, 2004, 847 A.2d 1151, on remand 2005 WL 4721634. Limitation Of Actions ⇨ 55(3); Limitation Of Actions ⇨ 95(10.1)

Allowing the statute of limitations, for a professional negligence claim, to commence running based on an attenuated idea of notice of injury, rather than actual knowledge of injury, presupposes notice of an actual injury that has occurred, and not merely a speculative wrong; if there is no injury, even the strongest belief that the defendant has caused the plaintiff real harm will not transmute that belief into a reality, for limitations purposes. *Wagner v. Sellinger*, 2004, 847 A.2d 1151, on remand 2005 WL 4721634. Limitation Of Actions ⇨ 95(10.1)

Knowledge of an injury is deemed sufficient to begin the running of the limitations period for a professional negligence claim if the plaintiff has reason to suspect that the defendant did something wrong, even if the full extent of the wrongdoing is not yet known. *Wagner v. Sellinger*, 2004, 847

A.2d 1151, on remand 2005 WL 4721634. Limitation Of Actions ⇨ 95(10.1)

The plaintiff need not be fully informed about the injury, for the statute of limitations to begin running with respect to a professional malpractice claim; she need only have some knowledge of some injury. *Wagner v. Sellinger*, 2004, 847 A.2d 1151, on remand 2005 WL 4721634. Limitation Of Actions ⇨ 95(10.1)

The statute of limitations for a professional malpractice claim will not begin to run until the plaintiff either has actual notice of the cause of action, or, given the obligation to discover the discoverable, has inquiry notice as of the time a reasonable investigation would have led to actual notice. *Wagner v. Sellinger*, 2004, 847 A.2d 1151, on remand 2005 WL 4721634. Limitation Of Actions ⇨ 95(10.1)

The discovery rule provides that, for limitations purposes, a professional malpractice claim does not accrue until a plaintiff knows, or by the exercise of reasonable diligence should know, of: (1) an injury; (2) its cause; and (3) some evidence of wrongdoing. *Wagner v. Sellinger*, 2004, 847 A.2d 1151, on remand 2005 WL 4721634. Limitation Of Actions ⇨ 95(10.1)

61. — Health care malpractice, ignorance of cause of action

It is only when the patient is acquainted with the problem that in fact exists, by the physician or by untoward developments that alert any diligent patient, that his medical malpractice cause of action accrues. *Hardi v. Mezzanotte*, 2003, 818 A.2d 974. Limitation Of Actions ⇨ 95(12)

62. — Legal malpractice, ignorance of cause of action

Under District of Columbia law, the three-year statute of limitations for a legal malpractice claim is governed by the discovery rule in cases where the relationship between the fact of injury and some tortious conduct is obscure at the time of injury. *Gallucci v. Schaffer*, 2007, 507 F.Supp.2d 85. Limitation Of Actions ⇨ 95(11)

Under District of Columbia law, terrorist hostage's children were on at least inquiry notice of malpractice claim against hostage's attorneys, based on attorneys' failure to include claims on behalf of children in father's suit against Iranian government, on date public law authorizing such claims was passed; hostage had lobbied for passage of law. *Jacobsen v. Oliver*, 2002, 201 F.Supp.2d 93. Limitation Of Actions ⇨ 95(11)

64. — Civil rights, ignorance of cause of action

Allegations that violations of civil rights began prior to statute of limitations period and continued into period, are actionable, provided claimants were unaware of discriminatory nature of their treatment until they were within limitations period, and unless they knew about discrimination prior to period and were not subjected to any additional discrimination during period. *Campbell v. National R.R. Passenger Corp.*, 2001, 163 F.Supp.2d 19.

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Limitation Of Actions ⇨ 58(1); Limitation Of Actions ⇨ 95(15)

65. — Securities or corporations, ignorance of cause of action

Sufficient evidence supported finding that split-off corporation had was on inquiry notice more than three years before it filed suit that it had suffered an injury from certified public accountant's (C.P.A.) negligence in that it needed to hire an accountant to refile corrected returns that C.P.A. should have noticed, thus supporting submission of C.P.A.'s statute of limitations defense to jury; accountant had informed the corporation that the C.P.A., who according to the corporation was responsible for reviewing its prior tax returns prepared by another accountant, had failed to notice that the other accountant had used an incorrect accounting method, and had become aware that it was legally obligated to pay back taxes, interest and penalties to the IRS. *Ideal Electronic Sec. Co., Inc. v. Brown*, 2003, 817 A.2d 806. Limitation Of Actions ⇨ 199(1)

66. Discovery of fraud—In general

Under District of Columbia law, governing fraud or negligent misrepresentation claims, the "discovery rule" provides that once a plaintiff actually knows, or with the exercise of reasonable diligence would have known, of some injury, its cause-in-fact, and some evidence of wrongdoing, then she is bound to file her cause of action within the applicable limitations period, measured from the date of her acquisition of the actual or imputed knowledge. *C & E Services, Inc. v. Ashland, Inc.*, 2007, 498 F.Supp.2d 242. Limitation Of Actions ⇨ 100(1); Limitation Of Actions ⇨ 100(13)

Nothing impeded, at any time, police officer's understanding that police department had failed to perform its obligations under alleged settlement agreement, and therefore discovery rule did not apply to make timely officer's claim for breach of agreement. *Moore v. District of Columbia*, C.A.D.C.2011, 445 Fed.Appx. 365, 2011 WL 5514057, Unreported. Limitation of Actions ⇨ 95(9)

67.5. — Inquiry notice, discovery of fraud

Although a fiduciary relationship between parties does not preclude a finding of inquiry notice, as required under District Columbia's discovery rule, providing that a limitations period is measured from date of actual or imputed knowledge, that is, when plaintiff is on inquiry notice, of fraud or negligent misrepresentation, the nature of the relationship between the parties is highly relevant to whether inquiry notice existed, as to whether reasonable diligence required the plaintiff to suspect wrongdoing on the defendant's part. *C & E Services, Inc. v. Ashland, Inc.*, 2007, 498 F.Supp.2d 242. Limitation Of Actions ⇨ 100(11)

Under District of Columbia law, the imputed knowledge component of the discovery rule, providing that limitations period is measured from date of actual or imputed knowledge of fraud or negligent misrepresentation, is referred to as "in-

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quiry notice," and the essential question for whether a plaintiff is on inquiry notice is whether the plaintiff has exercised reasonable diligence under the circumstances in acting or failing to act on whatever information was available to him. *C & E Services, Inc. v. Ashland, Inc.*, 2007, 498 F.Supp.2d 242. Limitation Of Actions ⇨ 100(11)

71. Concealment of cause of action

Under District of Columbia law, fraudulent concealment doctrine requires something of an affirmative nature designed to prevent discovery of a cause of action. *Lewis v. U.S.*, 2001, 173 F.Supp.2d 52, vacated in part on reconsideration 290 F.Supp.2d 1. Limitation Of Actions ⇨ 104(1)

Under District of Columbia law, failure to disclose information does not rise to the level of fraudulent concealment designed to prevent discovery of a cause of action. *Lewis v. U.S.*, 2001, 173 F.Supp.2d 52, vacated in part on reconsideration 290 F.Supp.2d 1. Limitation Of Actions ⇨ 104(2)

Under District of Columbia law, an act of fraudulent concealment by a defendant does not relieve a plaintiff of his independent duty to pursue his cause of action diligently; rather, a claim of fraudulent concealment is available only to a plaintiff who has exercised due diligence in the pursuit of his cause. *Lewis v. U.S.*, 2001, 173 F.Supp.2d 52, vacated in part on reconsideration 290 F.Supp.2d 1. Limitation Of Actions ⇨ 104(1)

For fraudulent concealment to toll the statute of limitations, there must be both fraudulent concealment on the part of defendant and reasonable diligence on the part of plaintiff to discover his claim. *Wiggins v. State Farm Fire and Cas. Co.*, 2001, 153 F.Supp.2d 16. Limitation Of Actions ⇨ 104(1)

Judgment debtor who brought action against judgment creditor for malicious prosecution, alleging that creditor wrongfully obtained default judgment against him, could not show that creditor attempted to conceal the prior action against debtor, as required to prove fraudulent concealment for purposes of tolling limitations period for malicious prosecution; debtor knew of prior action against him by creditor and moved to intervene. *Wiggins v. State Farm Fire and Cas. Co.*, 2001, 153 F.Supp.2d 16. Limitation Of Actions ⇨ 104(1)

Statutes of limitations applicable to consumer's claims against compact disc (CD) producers and distributors, under Antitrust Act and Consumer Protection Procedures Act, were not tolled, pursuant to fraudulent concealment doctrine, where consumer's attorney was served with complaint asserting same basic claims against producers and distributors some four years and seven months before filed action on behalf of consumer. *Marbry v. EMI Music Distribution, Inc.*, 129 WLR 2065 (Super. Ct. 2001).

72. Pendency of proceedings and equitable tolling

District of Columbia statutes of limitations applicable in §§ 1983 actions may be tolled when com-

plainant is imprisoned at time right of action accrues; however, statutes of limitations will not be tolled for person released from custody and then rearrested on separate charge. *Arnold v. District of Columbia*, 2002, 211 F.Supp.2d 144. Limitation Of Actions ⇨ 76(1)

District of Columbia statutes of limitations applicable to traffic-stop arrestee's §§ 1983 action against District and arresting officers, alleging excessive force and other rights violations and torts, were not tolled by arrestee's incarceration for felony gun possession that was subsequent and unrelated to traffic stop; arrestee had been released from custody for two weeks following traffic stop before weapons arrest. *Arnold v. District of Columbia*, 2002, 211 F.Supp.2d 144. Limitation Of Actions ⇨ 76(1)

Equitable tolling of District of Columbia statute of limitations was inappropriate in arrestee's §§ 1983 excessive force claim against District and police officers, absent justification for delay in filing action, regardless of fact that once released from custody arrestee was rearrested on unrelated weapons charge two weeks later and subsequently imprisoned; arrestee actually filed initial §§ 1983 action after second arrest, but withdrew it to seek counsel, then waited more than three years to write to police internal affairs officer about investigating his claims, and another two years before filing suit. *Arnold v. District of Columbia*, 2002, 211 F.Supp.2d 144. Limitation Of Actions ⇨ 104.5

Equitable tolling of statute of limitations applicable to §§ 1983 action does not apply absent some justification for plaintiff's failure to file timely. *Arnold v. District of Columbia*, 2002, 211 F.Supp.2d 144. Limitation Of Actions ⇨ 104.5

A court can equitably toll the statute of limitations, but its power to do so will be exercised only in extraordinary and carefully circumscribed instances. *Wiggins v. State Farm Fire and Cas. Co.*, 2001, 153 F.Supp.2d 16. Limitation Of Actions ⇨ 104.5

The plaintiff will not be allowed extra time to file unless he has exercised due diligence, and the plaintiff's excuse must be more than a garden variety claim of excusable neglect. *Wiggins v. State Farm Fire and Cas. Co.*, 2001, 153 F.Supp.2d 16. Limitation Of Actions ⇨ 104.5

Judgment debtor who brought action against judgment creditor for malicious prosecution, alleging that creditor wrongfully obtained default judgment against him, could not show that he exercised due diligence, or that there were extraordinary circumstances, so that District Court could grant equitable tolling of limitations period for malicious prosecution; debtor knew that creditor had improperly obtained default judgment against him on date default judgment was entered, and two year delay in filing action was inexcusable. *Wiggins v. State Farm Fire and Cas. Co.*, 2001, 153 F.Supp.2d 16. Limitation Of Actions ⇨ 104.5

Doctrine of equitable tolling did not permit consumer to stack one class action lawsuit on another,

so as to allow her to file claims against compact disc (CD) producers and distributors, under Anti-trust Act and Consumer Protection Procedures Act, based on conduct that occurred outside the statutes of limitations applicable to those claims. *Marbry v. EMI Music Distribution, Inc.*, 129 WLR 2065 (Super. Ct. 2001).

73. Estoppel to rely on limitation

Personal representative of shooting victim was collaterally estopped, under District of Columbia law, from arguing that Chinese gun manufacturer was equitably estopped from asserting statute of limitations defense in wrongful death action and from challenging dismissal without prejudice of representative's prior claim; representative's argument, that his failure to effect service on manufacturer should have been excused as manufacturer's fault, was fully and fairly litigated in earlier action. *Melara v. China North Industries, Corp.*, 2009, 658 F.Supp.2d 178, appeal dismissed 2011 WL 1769716. Judgment ⇨ 713(1); Judgment ⇨ 745

Under the "doctrine of equitable estoppel," a defendant cannot rely on the statute of limitations as a defense if his conduct has lulled the plaintiff into inaction until the statute has expired. *Wiggins v. State Farm Fire and Cas. Co.*, 2001, 153 F.Supp.2d 16. Limitation Of Actions ⇨ 13

If equitable estoppel applies, the defendant's conduct postpones the date at which a court will consider the injury to have accrued; the statute of limitations only begins to run once the defendant's wrongful actions to induce a filing delay have ceased. *Wiggins v. State Farm Fire and Cas. Co.*, 2001, 153 F.Supp.2d 16. Limitation Of Actions ⇨ 13

Judgment debtor who brought action against judgment creditor for malicious prosecution, alleging that creditor wrongfully obtained default judgment against him, could not show that he relied on creditor's conduct prior to date that default judgment was entered against him, for purpose of tolling limitations period for malicious prosecution under doctrine of equitable estoppel. *Wiggins v. State Farm Fire and Cas. Co.*, 2001, 153 F.Supp.2d 16. Limitation Of Actions ⇨ 13

Where the defendant has done anything to lull the plaintiff into inaction, thereby affirmatively inducing the plaintiff not to file a timely lawsuit, the defendant may be estopped from asserting the bar of the statute of limitations. *Beard v. Edmondson and Gallagher*, 2002, 790 A.2d 541. Limitation Of Actions ⇨ 13

75. Commencement of proceedings and relation back—In general

Graduate student knew or had reason to know of her spoliation of evidence claim against university premised on alleged destruction of evidence from her files, triggering District of Columbia's three-year limitations period, when she received e-mail from university stating that she was not eligible for graduation because she had not completed required credit hours. *Ling Yuan Hu v. George Washington University*, 2011, 766 F.Supp.2d 236,

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affirmed 2011 WL 3241457, rehearing en banc denied. Limitation of Actions ⇨ 95(3)

Graduate student was on notice of her Rehabilitation Act (RA) and ADA claims that university failed to accommodate her as non-native English speaker, triggering District of Columbia's three-year limitations period for suing on RA claim and period for initiating administrative proceedings on ADA claim, not later than when she received e-mail notifying her that she could not graduate because, among other reasons, she had failed comprehensive exam for which she had unsuccessfully requested accommodation. *Ling Yuan Hu v. George Washington University*, 2011, 766 F.Supp.2d 236, affirmed 2011 WL 3241457, rehearing en banc denied. Civil Rights ⇨ 1302; Limitation of Actions ⇨ 95(15)

Employee's filing an Equal Employment Opportunity Commission (EEOC) discrimination charge alleging violations of the District of Columbia Human Rights Act (DCHRA) by medical center did not toll one year limitations period for her defamation claims under District of Columbia law against center; defamation was not an unlawful discriminatory practice under the DCHRA. *Brown v. Children's Nat. Medical Center*, 2011, 773 F.Supp.2d 125. Limitation of Actions ⇨ 105(1)

78. — Amendment of pleadings, commencement of proceedings and relation back

Defamation claim against employer for statements it made to Equal Employment Opportunity Commission (EEOC) did not relate back to original race discrimination complaint, for limitations purposes, because original complaint contained no factual allegations suggesting that employer made any statement to EEOC that could be considered defamatory. *Stith v. Chadbourne & Parke, LLP*, 2001, 160 F.Supp.2d 1. Limitation Of Actions ⇨ 127(12)

Central inquiry in determining whether amended complaint relates back to original complaint is to determine whether the adverse party, viewed as a reasonably prudent person, ought to have been able to anticipate or should have expected that the character of the originally pleaded claim might be altered or that other aspects of the conduct, transaction, or occurrence set forth in the original pleading might be called into question. *Wagner v. Georgetown University Medical Center*, 2001, 768 A.2d 546. Limitation Of Actions ⇨ 127(1)

The fact that an amendment changes the legal theory on which the action initially was brought is of no consequence if the factual situation upon which the action depends remains the same and has been brought to defendant's attention by the original pleading. *Wagner v. Georgetown University Medical Center*, 2001, 768 A.2d 546. Limitation Of Actions ⇨ 127(2.1)

Amended complaint's informed consent claim against hospital related back to original complaint in which patient alleged negligence in performance of her surgery; amended complaint merely added another legal theory to same set of facts, and hospital did not claim prejudice. *Wagner v.*

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Georgetown University Medical Center, 2001, 768 A.2d 546. Limitation Of Actions ⇨ 127(5)

Amended complaint's informed consent claim against physician did not relate back to original complaint in which patient alleged negligence in performance of her surgery; patient had voluntarily dismissed original complaint, and informed consent claim was not brought on basis of newly discovered evidence. *Wagner v. Georgetown University Medical Center*, 2001, 768 A.2d 546. Limitation Of Actions ⇨ 127(14)

87. Adverse possession

Rowhouse owners did not obtain ownership to vacant lot behind their properties pursuant to deeds from their predecessors, and thus could not claim ownership of the vacant lot based on their predecessors' ownership by adverse possession, though the deeds stated they conveyed all "rights" belonging to their properties, as the word "rights," without more, did not include conveyance of a parcel of land other than the one expressly described, deeds did not describe the vacant lot, and two of the deeds expressly disclaimed conveying any rights in the vacant lot. *Sears v. Catholic Archdiocese of Washington*, 2010, 5 A.3d 653. Deeds ⇨ 117

Privity did not exist between rowhouse owners and their predecessors, as required in order for owners to tack their own adverse possession of vacant lot to that of their predecessors and establish 15-year period, in adverse possession action against Archdiocese seeking to quiet title to vacant lot behind rowhouse owners' properties, where none of the deeds to owners purported to include any description or reference to the vacant lot, and in two of the deeds predecessors expressly disavowed conveyance of any rights in the vacant lot. *Sears v. Catholic Archdiocese of Washington*, 2010, 5 A.3d 653. Adverse Possession ⇨ 43(4)

Landowner could not acquire District of Columbia's public school property by adverse possession of area where landowner had built garage and fence; no time could run against sovereign, the District held title in its governmental capacity and dedicated the land to a public use, nothing indicated that the District abandoned or intended to abandon any part of the property during its ownership, and even after District conveyed the property for operation of charter school, it remained dedicated to public use for public education. *Solid Rock Church, Disciples of Christ v. Friendship Public Charter School, Inc.*, 2007, 925 A.2d 554. Adverse Possession ⇨ 8(3)

In order to have exclusive possession for the purpose of establishing adversity, a claimant must hold possession of the property for himself as his own and not for another; the adverse claimant's possession cannot be shared with the true owner. *Patterson v. Sharek*, 2007, 924 A.2d 1005. Adverse Possession ⇨ 34; Adverse Possession ⇨ 37

Trustees failed to establish that landowner adversely possessed 25-foot strip of land over which adjoining landowners had an easement; adjoining landowners regularly used the 25-foot strip of land

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for ingress and egress, even when landowner parked his vehicle on the disputed tract of land. *Patterson v. Sharek*, 2007, 924 A.2d 1005. Easements ⇨ 32

87.5. Dismissal

Issue of whether arrestee's assault and battery claims against police officers were barred by District of Columbia's statute of limitations could not be resolved at motion to dismiss phase because of factual dispute as to whether arrestee was imprisoned following arrest, as would toll limitations period. *Jones v. Ritter*, 2008, 587 F.Supp.2d 152. Limitation Of Actions ⇨ 180(7)

88. Easements

The 15-year statutory period for a prescriptive easement based on use of "party wall" windows could not begin to run until the property was sold as subdivided property to separate owners. *Hefazi v. Stiglitz*, 2004, 862 A.2d 901. Party Walls ⇨ 4(4)

The burden of establishing use required for the creation of prescriptive easement by a preponderance of the evidence rests upon the claimant. *Hefazi v. Stiglitz*, 2004, 862 A.2d 901. Easements ⇨ 36(3)

To establish the existence of a prescriptive easement, property owners must show that their use of adjacent property owner's land was open, notorious, exclusive, continuous, and adverse, and that it was for the statutory period of 15 years. *Hefazi v. Stiglitz*, 2004, 862 A.2d 901. Easements ⇨ 5

90. Laches

Doctrine of laches did not apply to bar indemnity and breach of contract claims that railroad asserted against its excess liability insurers in connection with judgment entered against it in personal injury action, inasmuch as railroad acted reasonably in waiting until the disposition of prior action addressing its entitlement to coverage for judgment pursuant to excess liability policies pertaining to different time period before bringing action for breach of contract and indemnity under policies covering time period pertinent to those claims, given its firm conviction at the time of prior action that insurers had indemnification obligations under policies addressed in that action, and insurers were not prejudiced by railroad's delay in bringing second action, which was brought within three-year statute of limitations. *National R.R. Passenger Corp. v. Lexington Ins. Co.*, 2005, 357 F.Supp.2d 287. Insurance ⇨ 3566

Trial court ruling on laches defense could conclude that trade name owner was not vigilant and failed to exercise diligence in protecting rights under consent decree against competitor and that competitor was prejudiced by owner's delay before seeking to hold competitor in contempt for violating consent decree entered more than twelve years earlier, and, thus, the court could limit the owner's right to recover competitor's profits to a reasonable period of time, five years, before the owner filed petition; with virtually no effort, the owner could have learned that the competitor was using

the owner's name in sales to federal government offices located in the District of Columbia in violation of the decree. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 46

"Laches" is the principle that equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Equity ⇨ 67

To establish the defense of laches, the evidence must show both that the delay was unreasonable and that it prejudiced the defendant. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Equity ⇨ 72(1)

Of the two components of laches, unreasonable delay and prejudice, prejudice is the primary factor. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Equity ⇨ 72(1)

If the delay is lengthy, a lesser showing of prejudice is required to establish laches; thus, when the delay is measured in years rather than months, reliance interests grow, memories dim, evidence is lost, and prejudice may be inferred more readily. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Equity ⇨ 72(1)

The doctrine of laches applied to trade name owner's petition to hold competitor in contempt for violating consent decree entered more than twelve years earlier, even though the owner owed no duty to monitor competitor's compliance with a court order. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 46

Laches is not a valid defense, unless the defendant has been prejudiced by delay and that delay was unreasonable. *Sisson v. District of Columbia Bd. of Zoning Adjustment*, 2002, 805 A.2d 964. Equity ⇨ 72(1)

90.5. Tolling

Dismissal with prejudice of juvenile plaintiffs' common law claims, under District of Columbia law, arising from police officers' alleged use of batons against the plaintiffs, was not warranted; although plaintiffs erroneously conceded that the juveniles' claims were time-barred, the limitations period for those claims was tolled until juveniles reached age of majority, so that dismissal without prejudice was appropriate. *Rudder v. Williams*, C.A.D.C.2012, 666 F.3d 790.

Allegations that descendants of Jewish Hungarian collector of art promptly commenced negotiations with Hungarian government following collapse of Communist rule for return of art collection, that negotiations continued until family member filed suit in Hungary, that Hungary actively misled descendants for years into believing that it accepted their ownership rights to artwork collection, and repeatedly advised them it would reach favorable decision, at which time they could decide if further action would be re-

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quired, were sufficient to state that District of Columbia's three-year limitations period for descendant's bailment claims was subject to equitable tolling. *de Csepel v. Republic of Hungary*, 2011, 2011 WL 3855862. Limitation of Actions ⇨ 104.5

Under District of Columbia law, medical school student's claim against medical school for breach of contract based on student's dismissal from the school accrued, for limitations purposes, on the date of the dismissal. *Hajjar-Nejad v. George Washington University*, 2011, 802 F.Supp.2d 166. Limitation of Actions ⇨ 46(6)

District of Columbia employee's disparate treatment claims under Rehabilitation Act accrued, and applicable three-year statute of limitations began to run, when employee received notice by employer's Equal Employment Opportunity (EEO) manager that employer had denied his request to work from home. *Adams v. District of Columbia*, 2010, 740 F.Supp.2d 173, reconsideration denied 793 F.Supp.2d 392. Limitation Of Actions ⇨ 58(1)

Police department's alleged acts to conceal identity of police officer did not toll, under lulling doctrine, District of Columbia's one year statute of limitations for arrestee's claims of assault, battery, false arrest, defamation and intentional infliction of emotional distress, absent any affirmative inducement by department to prevent filing of action. *Hall v. Lanier*, 2010, 708 F.Supp.2d 28. Limitation Of Actions ⇨ 13

Personal representative of shooting victim was barred, under District of Columbia law, from asserting equitable tolling of one-year statute of limitations for his wrongful death claim and three-year statute of limitations for other torts in his capacity as personal representative, in action against gun manufacturer, where assertion of equitable tolling was based on allegedly timely filing of claims that were later dismissed without prejudice. *Melara v. China North Industries, Corp.*, 2009, 658 F.Supp.2d 178, appeal dismissed 2011 WL 1769716. Death ⇨ 39; Limitation Of Actions ⇨ 104.5

Former District of Columbia Metropolitan Police Department (MPD) employee's exhaustion of administrative remedies in connection with her defamation claims against District and mayor equitably tolled one-year statute of limitations for defamation claims until date when administrative decisions became final. *Owens v. District of Columbia*, 2009, 631 F.Supp.2d 48. Limitation Of Actions ⇨ 105(1)

District of Columbia limitations statute governing *Bivens* claims brought by detainee against federal officials, stemming from alleged five-month jail overdetention, would not be tolled by detainee's imprisonment for due process claims related to issuance of Notice of Escape following refusal of readmission to halfway house, since purported injury occurred prior to detainee's imprisonment. *Wormley v. U.S.*, 2009, 601 F.Supp.2d 27. Limitation Of Actions ⇨ 75

District of Columbia limitations statute governing *Bivens* claims brought by detainee against

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federal officials, stemming from alleged five-month jail overdetention, would be tolled during detainee's imprisonment following issuance of detainer, to extent that alleged injuries occurred during imprisonment. *Wormley v. U.S.*, 2009, 601 F.Supp.2d 27. Limitation Of Actions ⇨ 75

Three-year statutes of limitations applicable to claims under District of Columbia law for recovery of personal property, infliction of emotional distress, and breach of contract brought by participant in airline's frequent flyer program against airline and others were tolled during time that participant's request to proceed in forma pauperis and his motion for reconsideration of order denying that request were pending. *Ficken v. AMR Corp.*, 2008, 578 F.Supp.2d 134. Limitation Of Actions ⇨ 105(1)

Under District of Columbia law, statutory period for plaintiff to file libel action was not equitably tolled after he mistakenly filed action in federal court in New Jersey, even if defendant had notice of claim in New Jersey action, and New Jersey court could have transferred action to District of Columbia, where plaintiff never requested transfer, and New Jersey action was dismissed for lack of personal jurisdiction. *Jovanovic v. US-Algeria Business Council*, 2008, 561 F.Supp.2d 103. Limitation Of Actions ⇨ 104.5

Equitable tolling was warranted of three-year limitations period applicable to participant's ERISA benefits claim during internal appeal of benefits denial where participant diligently pursued her rights after being informed that her benefits were terminated and requirement that she exhaust her administrative remedies before filing suit and administrator's delay in processing internal appeal were extraordinary circumstances, which rendered strict application of statute of limitations inequitable. *Pettaway v. Teachers Ins. and Annuity Ass'n of America*, 2008, 547 F.Supp.2d 1. Limitation Of Actions ⇨ 104.5

Client's affirmed statement that he was physically injured while on night patrol during his service in the Vietnam War was insufficient to establish that he was mentally unsound, as would have tolled statute of limitations under District of Columbia law on client's legal malpractice claim. *Gallucci v. Schaffer*, 2007, 507 F.Supp.2d 85. Limitation Of Actions ⇨ 74(1)

Under District of Columbia law, three-year statute of limitations for client's malpractice action against law firm and attorneys, which arose from alleged failure to advise client that his workers' compensation had been calculated incorrectly, was not tolled, pursuant to doctrine of fraudulent concealment, by telephone conversation client allegedly had with unidentified individual at firm, during which that individual told client that there was nothing more firm could do for him, since client was already on notice of the alleged malpractice prior to the date of the alleged conversation. *Gallucci v. Schaffer*, 2007, 507 F.Supp.2d 85. Limitation Of Actions ⇨ 104(3)

Widow could not have reasonably relied on alleged misrepresentations made by deceased husband's attorney in deposition regarding husband's company's purchase of property so as to toll statute of limitations on widow's claims of fraud and negligent misrepresentation stemming from transfer of property to company that was a beneficiary of husband's trusts; although attorney incorrectly stated during his deposition that company's attorney worked on pre-death and not post-death matters for husband, the statement, even assuming that it was intentionally false, did not toll the statute of limitations since husband's attorney had no continuing fiduciary duty to widow because he had previously relinquished his appointment as co-personal representative of deceased husband's estate, and widow was already on inquiry notice of company's attorney's involvement in the foreclosure sale of the property because his name appeared on the confirmatory substitute trustee's deed as the person to whom the deed should be returned after it was recorded. *Drake v. McNair*, 2010, 993 A.2d 607. Limitation Of Actions ⇨ 104(3)

Dismissal without prejudice, based on insufficiency of service of process, of arrestee's complaint against District of Columbia, alleging intentional torts relating to the arrest, wiped out the tolling effect of the filing of the complaint, and thus, the statute of limitations was deemed to have continued running from whenever the causes of action for intentional torts accrued. *Stewart-Veal v. District of Columbia*, 2006, 896 A.2d 232. Limitation Of Actions ⇨ 130(9)

Once a suit is dismissed, even if without prejudice, the tolling effect of the filing of the suit is wiped out and the statute of limitations is deemed to have continued running from whenever the cause of action accrued, without interruption by that filing. *Stewart-Veal v. District of Columbia*, 2006, 896 A.2d 232. Limitation Of Actions ⇨ 130(5)

91. District of Columbia as party

The District of Columbia is immune from statutes of limitation in suits relating to a public function. *Solid Rock Church, Disciples of Christ v. Friendship Public Charter School, Inc.*, 2007, 925 A.2d 554. Limitation Of Actions ⇨ 11(1)

93. Federal court application of state law

District of Columbia one-year limitations statute was applicable to *Bivens* claims brought by detainee against federal officials, stemming from alleged five-month jail overdetention, since federal claims were analogous to false imprisonment, false arrest, and libel causes of action under District of Columbia law. *Wormley v. U.S.*, 2009, 601 F.Supp.2d 27. United States ⇨ 50.20

In diversity action filed in District Court for the District of Columbia by plaintiff, who contracted with cemetery to have her husband buried there, and who brought action against cemetery and funeral director, alleging breach of contract, negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, fraud

and/or negligent misrepresentation, breach of implied covenant of good faith, trespass, nuisance, conversion, and professional malpractice, District of Columbia's statute of limitations determined the limitations periods. *Tolbert v. National Harmony Memorial Park*, 2007, 520 F.Supp.2d 209. Federal Courts ⇨ 412.1; Federal Courts ⇨ 431; Federal Courts ⇨ 1040.1

Under District of Columbia law, two-year limitations period for bringing tort claim against the United States under the Federal Tort Claims Act (FTCA) was not tolled by fraudulent concealment doctrine for child whose injuries were apparent almost immediately after birth, in mother and her son's medical malpractice action against Army medical center staff, where staff's alleged failure to disclose that their negligent actions may have been cause of son's birth defects was a genuine question of medical causation rather than a desire to mislead, and plaintiffs failed to exercise due diligence. *Lewis v. U.S.*, 2001, 173 F.Supp.2d 52, vacated in part on reconsideration 290 F.Supp.2d 1. Limitation Of Actions ⇨ 104(2)

Statute of limitations for §§ 1981 suit by railroad workers against railway and union, alleging that they were discriminated against in contracting due to their race, was most closely analogous District of Columbia three year statute, rather than four year federal statute applicable in default of any federal statute of limitations; enactment of civil rights statute predated federal default statute of limitations, and amendment adding rights which post-dated limitations statute referenced pre-existing law. *Campbell v. National R.R. Passenger Corp.*, 2001, 163 F.Supp.2d 19. Civil Rights ⇨ 1383

95. Pleadings

Retired police officers provided no factual support for their arguments that either the discovery rule or equitable tolling applied such that their claims against District of Columbia, alleging that the District failed to pay them basic and overtime compensation for fulfilling the duties of "detective sergeants," in violation of District of Columbia law and the Fair Labor Standards Act (FLSA), were not time-barred. *Abate v. District of Columbia*, 2009, 659 F.Supp.2d 156. Limitation Of Actions ⇨ 95(14); Limitation Of Actions ⇨ 104.5

Whether former client's claims against attorney for, inter alia, negligence and intent to misappropriate funds were time-barred under District of Columbia law could not be decided on motion to dismiss when pro se plaintiff did not clearly state events giving rise to all claims asserted in complaint. *Nwachukwu v. Karl*, 2002, 223 F.Supp.2d 60. Federal Civil Procedure ⇨ 1831

Former employee's pro se complaint alleged that she suffered emotional distress as result of supervisor's conduct, and, thus, employee's amended complaint adding claim for intentional infliction of emotional distress under District of Columbia law related back to original complaint for statute of limitations purposes. *Thompson v. Jasas Corp.*,

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2002, 212 F.Supp.2d 21. Limitation Of Actions ⇨ 127(5)

The issue of whether a complaint fails to state a claim because it was time-barred is to be decided by the trial court, and, in making this determination, the court can consider the complaint and any documents attached to or incorporated in the complaint. *District of Columbia Water and Sewer Authority v. Delon Hampton & Associates*, 2004, 851 A.2d 410. Federal Courts ⇨ 1052.1

95.5. Amendment of pleadings, generally

Allowing church and trustees to amend answer to include three-year statute of limitations defense was not abuse of discretion, in action brought by plaintiff who suffered permanent brain damage from exposure to lead paint; limitations defense was obvious from face of complaint, plaintiff did not forego other avenues of relief in reliance on defendants' failure to assert limitations defense, and accrual of litigation expenses was undocumented and unpersuasive in light of plaintiff's extended delay in bringing suit. *Briggs v. Israel Baptist Church*, 2007, 933 A.2d 301. Limitation Of Actions ⇨ 184

96. Summary judgment

Fact questions existed as to whether union local was adversely dominated by individual employees who engaged in scheme to embezzle union's funds, as to whether employees engaged in fraudulent concealment of scheme, and as to date when union officials discovered or should have discovered scheme, precluding summary judgment on statute of limitations grounds in union's negligence and aiding and abetting action against bank at which local had maintained checking account that employees had used to effect scheme. *American Federation of Teachers, AFL-CIO v. Bullock*, 2008, 539 F.Supp.2d 161, reconsideration granted, vacated 605 F.Supp.2d 251, appeal dismissed 2009 WL 5125394. Federal Civil Procedure ⇨ 2487

Genuine issue of material fact as to when contractor had actual or inquiry notice of subcontractor's alleged misrepresentations about defectively priced products supplied to contractor for resale to government customers precluded summary judgment on issue of accrual of contractor's claim that subcontractor breached implied covenant of good faith and fair dealing. *C & E Services, Inc. v. Ashland, Inc.*, 2007, 498 F.Supp.2d 242. Federal Civil Procedure ⇨ 2492

Genuine issues of material fact as to when contractor providing water treatment products to government customers had actual or imputed knowledge that products supplied by subcontractor for contractor's resale were defectively priced precluded summary judgment on issue of accrual of contractor's fraud and negligent misrepresentation claims against subcontractor. *C & E Services, Inc. v. Ashland, Inc.*, 2007, 498 F.Supp.2d 242. Federal Civil Procedure ⇨ 2515

Issue of fact existed as to whether mother of woman exposed to diethylstilbestrol (DES) in utero had taken DES manufactured by particular

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pharmaceutical company, rather than by any of several other companies that had manufactured drug, precluding summary judgment in woman's products liability action against company; woman proffered testimony by current owner of pharmacy where mother had purchased drug that, at time of those purchases, only defendant company's DES had been stocked at pharmacy. *Gassmann v. Eli Lilly and Co.*, 2005, 407 F.Supp.2d 203. Federal Civil Procedure ⇨ 2515

Genuine issues of material fact regarding when daughter, whose mother had ingested prescription drug diethylstilbestrol (DES) during pregnancy, objectively linked her infertility problems to her in utero exposure to DES precluded summary judgment, on statute of limitations grounds, on her products liability claim against pharmaceutical company. *Reeves v. Eli Lilly and Co.*, 2005, 368 F.Supp.2d 11. Federal Civil Procedure ⇨ 2515

98. Presumptions and burden of proof

In the absence of an analogous statute of limitations, the party asserting laches has the burden of establishing that the defendant has been prejudiced by delay and that delay was unreasonable. *Sisson v. District of Columbia Bd. of Zoning Adjustment*, 2002, 805 A.2d 964. Equity ⇨ 84

If one claim is barred by the statute of limitations, other claims intertwined with that claim are also barred. *Mullin v. Washington Free Weekly, Inc.*, 2001, 785 A.2d 296. Limitation Of Actions ⇨ 166

100. Questions for jury

Issue of when student discovered or should have discovered that her general education development (GED) certificate was invalid involved fact question that could not be resolved on motion to dismiss student's fraud claims against school operator on limitations grounds. *Haralson v. Management & Training Corp.*, 2010, 724 F.Supp.2d 82. Federal Civil Procedure ⇨ 1831

Under District of Columbia law, unless the determination of when a cause of action accrued for fraud or negligent misrepresentation is so clear that the court can rule on the issue as a matter of law, the jury should decide the issue on appropriate instructions. *C & E Services, Inc. v. Ashland, Inc.*, 2007, 498 F.Supp.2d 242. Limitation Of Actions ⇨ 199(2)

Although what constitutes the accrual of a cause of action for fraud or negligent misrepresentation is a question of District of Columbia law, when accrual actually occurred in a particular case is a question of fact. *C & E Services, Inc. v. Ashland, Inc.*, 2007, 498 F.Supp.2d 242. Limitation Of Actions ⇨ 199(2)

Under District of Columbia law, whether plaintiff has either actual or inquiry notice of his or her claim, for statute of limitations purposes, is question of fact. *Gassmann v. Eli Lilly and Co.*, 2005,

407 F.Supp.2d 203. Limitation Of Actions ⇨ 199(1)

Date on which parking garage patron who was struck by unattended vehicle knew or should have known of wrongdoing of vehicle manufacturer, for purposes of statute of limitations' discovery rule was a question of fact to be decided by jury. *Lee v. Wolfson*, 2003, 265 F.Supp.2d 14. Limitation Of Actions ⇨ 199(1)

Under District of Columbia law, what constitutes the accrual of a cause of action is a question of law; when the cause of action actually accrued in a particular case is a question of fact. *Smith v. Brown & Williamson Tobacco Corp.*, 2000, 108 F.Supp.2d 12. Limitation Of Actions ⇨ 199(1)

Whether plaintiff exercised reasonable diligence, for purposes of discovery rule under District of Columbia law, is a highly fact-bound issue, and requires an evaluation of all of plaintiff's circumstances; relevant circumstances include, but are not limited to, the conduct and misrepresentations of defendant and the reasonableness of plaintiff's reliance on defendant's conduct and misrepresentations. *The Plan Committee v. PricewaterhouseCoopers, LLP*, 2005, 335 B.R. 234. Limitation Of Actions ⇨ 95(2)

What constitutes the accrual of a cause of action is question of law under District of Columbia law; the actual date of accrual, however, is question of fact. *The Plan Committee v. PricewaterhouseCoopers, LLP*, 2005, 335 B.R. 234. Limitation Of Actions ⇨ 199(1)

What constitutes the accrual of a cause of action, for limitations purposes, is a question of law. *Doe v. Medlantic Health Care Group, Inc.*, 2003, 814 A.2d 939. Limitation Of Actions ⇨ 199(1)

When accrual of the cause of action actually occurred in a particular case, for limitations purposes, is a question of fact for the fact finder. *Doe v. Medlantic Health Care Group, Inc.*, 2003, 814 A.2d 939. Limitation Of Actions ⇨ 199(1)

Whether the relationship of the defendants is sufficiently close, so that plaintiff's inquiry notice of wrongdoing on the part of one defendant causes the accrual, for limitations purposes, of his action against another, unknown defendant responsible for the same harm is a question of fact. *Doe v. Medlantic Health Care Group, Inc.*, 2003, 814 A.2d 939. Limitation Of Actions ⇨ 199(1)

101. Review

When the relationship between the fact of injury and the alleged tortious conduct is obscure when the injury occurs, Court of Appeals applies a discovery rule to determine when the statute of limitations commences. *Brown v. National Academy of Sciences*, 2004, 844 A.2d 1113. Limitation Of Actions ⇨ 95(3)

Dismissal with prejudice of pedestrian's personal injury complaint against the District of Columbia was not reversible error, where statute of limitations period governing claim expired three days after complaint was filed with mayor. *Dorsey v. District of Columbia*, 2003, 827 A.2d 32, amended and superseded 839 A.2d 667. Appeal And Error ⇨ 1061.2

On appeal, a trial court's ruling on laches presents a mixed question of fact and law that calls for a mixed standard of review; answers to the factual questions bearing on prejudice to the defendant from delay and on plaintiffs' earlier awareness of the claim are for the trial court, whose findings will be accepted unless clearly erroneous, but the question of whether the facts, taken together, are sufficient to sustain the defense is one of law which the appellate court will review without need for deference to the trial court's judgment. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Federal Courts ⇨ 1066

To determine the validity of a laches defense, the Court of Appeals looks to the entire course of events. *Sisson v. District of Columbia Bd. of Zoning Adjustment*, 2002, 805 A.2d 964. Equity ⇨ 67

§ 12-302. Disability of plaintiff.

(a) Except as provided by subsection (b) of this section, when a person entitled to maintain an action is, at the time the right of action accrues:

- (1) under 18 years of age; or
- (2) non compos mentis; or
- (3) imprisoned —

he or his proper representative may bring action within the time limited after the disability is removed.

(b) When a person entitled to maintain an action for the recovery of lands, tenements, or hereditaments, or upon an instrument under seal, is under any of the disabilities specified by subsection (a) of this section at the time the right of action accrues, he or his proper representative, except where otherwise specified herein, may bring the action within 5 years after the disability is removed, and not thereafter.

(Dec. 23, 1963, 77 Stat. 510, Pub. L. 88-241, § 1; Mar. 16, 1978, D.C. Law 2-61, § 2, 24 DCR 6011.)

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1. Infancy

Dismissal with prejudice of juvenile plaintiffs' common law claims, under District of Columbia law, arising from police officers' alleged use of batons against the plaintiffs, was not warranted; although plaintiffs erroneously conceded that the juveniles' claims were time-barred, the limitations period for those claims was tolled until juveniles reached age of majority, so that dismissal without prejudice was appropriate. *Rudder v. Williams*, C.A.D.C.2012, 666 F.3d 790. Federal Civil Procedure ⇨ 1754; Federal Civil Procedure ⇨ 1837.1

Under District of Columbia law, if a minor is injured, then the statute of limitations is tolled until the minor reaches the age of eighteen. *Osu-chukwu v. Gallaudet University*, 2002, 296 F.Supp.2d 1. Limitation Of Actions ⇨ 72(2)

Attorney's ignorance that limitations period for medical malpractice claim brought on behalf of infant would be tolled until infant reached age 18 was not entitled to any weight, when determining proper disciplinary sanction for attorney's failure to represent client with skill and care; while parents were rushed into filing medical malpractice action because attorney had advised them the limitations period would expire soon, there was no evidence parents would have wished to postpone the filing of action if they had been advised of the tolling, limitations period for mother's intertwined claim for loss of wages would not have been tolled, and action was filed primarily as a settlement tool. In re *Nwadike*, 2006, 905 A.2d 221. Attorney And Client ⇨ 59.5(1)

2. Insanity or other incompetency

Plaintiffs' impaired judgment alone is not enough to toll the statute of limitations under District of Columbia law. *Gallucci v. Schaffer*, 2007, 507 F.Supp.2d 85. Limitation Of Actions ⇨ 74(1)

Under District of Columbia law, a person is mentally unsound for purposes of tolling civil statute of limitations when the disability is of such a nature as to show that a plaintiff is unable to manage his business affairs or estate, or to comprehend his legal rights or liabilities. *Gallucci v. Schaffer*, 2007, 507 F.Supp.2d 85. Limitation Of Actions ⇨ 74(1)

Under District of Columbia law, the statute of limitations for a claim is tolled if a plaintiff is incapable of handling their own affairs or unable to function in society. *Gallucci v. Schaffer*, 2007, 507 F.Supp.2d 85. Limitation Of Actions ⇨ 74(1)

Client's affirmed statement that he was physically injured while on night patrol during his service in the Vietnam War was insufficient to establish that he was mentally unsound, as would have tolled statute of limitations under District of Columbia

law on client's legal malpractice claim. *Gallucci v. Schaffer*, 2007, 507 F.Supp.2d 85. Limitation Of Actions ⇨ 74(1)

2.5. Bipolar disorder

Former employee was not non compos mentis under District of Columbia law, as would toll Equal Employment Opportunity Commission (EEOC) 45-day time period for filing complaint alleging that he was constructively discharged on the basis of his bipolar disorder in violation of the Rehabilitation Act, absent evidence he was ever adjudged incompetent, had a caretaker appointed or took measures to let someone handle his affairs during limitations period, and where employee applied to take foreign service examination, passed exam's written examination and drafted a letter to human resources to complain about alleged constructive discharge during the limitations period. *Perry v. U.S. Dept. of State*, 2009, 669 F.Supp.2d 60. Civil Rights ⇨ 1505(6)

3. Conviction or imprisonment for crime

District of Columbia limitations statute governing *Bivens* claims brought by detainee against federal officials, stemming from alleged five-month jail overdetention, would not be tolled by detainee's imprisonment for due process claims related to issuance of Notice of Escape following refusal of readmission to halfway house, since purported injury occurred prior to detainee's imprisonment. *Wormley v. U.S.*, 2009, 601 F.Supp.2d 27. Limitation Of Actions ⇨ 75

District of Columbia limitations statute governing *Bivens* claims brought by detainee against federal officials, stemming from alleged five-month jail overdetention, would be tolled during detainee's imprisonment following issuance of detainer, to extent that alleged injuries occurred during imprisonment. *Wormley v. U.S.*, 2009, 601 F.Supp.2d 27. Limitation Of Actions ⇨ 75

Under District of Columbia law, statute of limitations is tolled when plaintiff is imprisoned at time cause of action accrues. *Fletcher v. District of Columbia*, 2007, 481 F.Supp.2d 156, opinion vacated in part on denial of reconsideration 550 F.Supp.2d 30. Limitation Of Actions ⇨ 75

Under District of Columbia law, one-year statute of limitations for arrestee's common law tort claims against arresting officers was tolled until arrestee was released from jail. *Fernandors v. District of Columbia*, 2005, 382 F.Supp.2d 63. Limitation Of Actions ⇨ 75

Under District of Columbia statute which provides that when a person is "imprisoned" at the time the right of action accrues, then that person "may bring action within the time limit after the disability is removed," only upon a prisoner's release from that arrest does the statute of limitations begin to run again. *Fernandors v. District of Columbia*, 2005, 382 F.Supp.2d 63. Limitation Of Actions ⇨ 75

Under District of Columbia law, for an action that accrues during an arrest, statute which pro-

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vides that when a person is "imprisoned" at the time the right of action accrues, then that person "may bring action within the time limit after the disability is removed," tolls the statute of limitations during the time of any imprisonment resulting from that arrest. *Fernandors v. District of Columbia*, 2005, 382 F.Supp.2d 63. Limitation Of Actions ⇨ 75

Prisoner's section 1983 claims, which sought monetary damages as result of alleged violation of speedy trial provisions of Interstate Agreement on Detainers, were not time barred where prisoner remained incarcerated. D.C.Code 1981, § 12-302(a)(3); 42 U.S.C.A. § 1983; Interstate Agreement on Detainers Act, §§ 1-8, 18 U.S.C.A.App. *Murray v. District of Columbia*, 1993, 826 F.Supp. 4, appeal dismissed 1993 WL 483949, certiorari denied 114 S.Ct. 1556, 511 U.S. 1038, 128 L.Ed.2d 203. Limitation Of Actions ⇨ 75

Statute of limitations applicable to inmate's claim to challenge solitary confinement in reprisal for exercising constitutional rights was tolled by imprisonment at the time claim accrued. *Murray v. District of Columbia*, 2005, 870 A.2d 25. Limitation Of Actions ⇨ 75

4. Authority to bring action

Plaintiff was not authorized to bring suit on behalf of his adopted son's biological father, although biological father lived in Romania and was not fluent in English, where plaintiff failed to show that biological father was legally incompetent.

Ficken v. AMR Corp., 2008, 578 F.Supp.2d 134. Mental Health ⇨ 486

Plaintiff was not authorized to bring suit on behalf of his adopted son, although son was a minor at time allegedly tortious conduct had occurred, where son was older than 18 years of age at time of lawsuit, and power of attorney signed by son was not duly executed because it was not notarized or dated and did not list son's social security number. *Ficken v. AMR Corp.*, 2008, 578 F.Supp.2d 134. Adoption ⇨ 20; Parent And Child ⇨ 8; Principal And Agent ⇨ 10(1)

5. Dismissal

Issue of whether arrestee's assault and battery claims against police officers were barred by District of Columbia's statute of limitations could not be resolved at motion to dismiss phase because of factual dispute as to whether arrestee was imprisoned following arrest, as would toll limitations period. *Jones v. Ritter*, 2008, 587 F.Supp.2d 152. Limitation Of Actions ⇨ 180(7)

Although one-year period under District of Columbia law to bring action for assault or battery is tolled if a plaintiff is imprisoned at the time the right of action accrues, the plaintiff's disability is removed at the instant he is released from custody, at which time the statute of limitations begins to run and continues to run even if plaintiff subsequently is arrested or imprisoned. *Jones v. Ritter*, 2008, 587 F.Supp.2d 152. Limitation Of Actions ⇨ 75

§ 12-309. Actions against District of Columbia for unliquidated damages; time for notice.

Historical and Statutory Notes

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 3 of District of Columbia Employee Non-Liability and Notice of Claim Clarification Emergency Amendment Act of 2002 (D.C. Act 14-499, October 23, 2002, 49 DCR 10022).

Miscellaneous Notes

Delegation of Duty to Receive Notice under D.C. Official Code § 12-309, see Mayor's Order 2004-10, January 20, 2004 (51 DCR 1455).

Handling of Legal Correspondence, see Mayor's Order 2004-77, May 14, 2004 (51 DCR 5280).

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Standing 33.5

1. In general

Statute requiring notice in writing within six months of event in order to maintain action against District of Columbia for unliquidated damages to person or property is condition precedent to filing suit against District of Columbia. *Musgrove v. Government of Dist. of Columbia*, 2009, 602 F.Supp.2d 141. District Of Columbia ⇨ 36

Compliance with terms of statute providing six-month period within which plaintiff must notify Mayor of claim against District of Columbia is a

mandatory prerequisite to filing a tort claim against the District of Columbia. *Jones v. Ritter*, 2008, 587 F.Supp.2d 152. District Of Columbia ⇨ 36

Public university employee's untimely notice of his claims to District of Columbia mayor did not satisfy District of Columbia Human Rights Act's notice requirement. *Johnson v. District of Columbia*, 2008, 572 F.Supp.2d 94, amended on reconsideration in part 632 F.Supp.2d 20. District Of Columbia ⇨ 36

Compliance with statute requiring notice in writing within six months of event in order to maintain an action against the District of Columbia for unliquidated damages to person or property is mandatory. *Cason v. D.C. Dept. of Corrections*, 2007, 477 F.Supp.2d 141, appeal dismissed 2007

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WL 2892694, rehearing en banc denied. District Of Columbia ⇨ 36

2. Purpose

The purposes of the statutory requirement that notice be given within six months after an injury was sustained to permit suit against the District of Columbia, are: (1) to protect the District against unreasonable claims, and (2) to give reasonable notice to the District so that the facts may be ascertained and, if possible, deserving claims adjusted and meritless claims resisted. *Enders v. District of Columbia*, 2010, 4 A.3d 457. District Of Columbia ⇨ 36

Purpose of requirement that potential tort plaintiffs give written notice to District of Columbia within six months of an injury in order to bring suit is to allow the District to conduct a prompt investigation of an injured person's claim, separate and apart from any investigation the District may conduct as a matter of course into a hit-and-run automobile accident involving a stolen vehicle. *Clark v. Flach*, 2009, 604 F.Supp.2d 1. Automobiles ⇨ 230; District Of Columbia ⇨ 36

Purpose of statute providing six-month period within which plaintiff must notify Mayor of claim against District of Columbia is to give the District officials reasonable notice of the incident so that the facts may be ascertained and, if possible, deserving claims adjusted and meritless claims resisted. *Jones v. Ritter*, 2008, 587 F.Supp.2d 152. District Of Columbia ⇨ 36

The purpose of the District of Columbia Human Rights Act's notice requirement is to provide an early warning to District of Columbia officials regarding litigation likely to occur in the future. *Johnson v. District of Columbia*, 2008, 572 F.Supp.2d 94, amended on reconsideration in part 632 F.Supp.2d 20. District Of Columbia ⇨ 36

Purpose of statutory notice requirement under District of Columbia's Tort Claims Act is to (1) protect District of Columbia against unreasonable claims and (2) to give reasonable notice to District of Columbia so that facts may be ascertained and, if possible, deserving claims adjudicated and meritless claims resisted. *R. v. District of Columbia*, 2005, 370 F.Supp.2d 267. District Of Columbia ⇨ 36

Notice under the statute governing actions against the District of Columbia for unliquidated damages is a condition precedent to filing suit against the District, and is designed to ensure that District officials are given prompt notice of claims for potentially large sums of money so that they could quickly investigate before evidence became lost or witnesses unavailable, correct hazardous or potentially hazardous conditions, and settle meritorious claims. *Jones v. District of Columbia*, 2004, 346 F.Supp.2d 25, affirmed in part, reversed in part and remanded 429 F.3d 276, 368 U.S.App.D.C. 279, on remand 646 F.Supp.2d 42. District Of Columbia ⇨ 36

The purposes of the statute requiring claimants to provide notice of an injury to the District of Columbia within six months after an injury was

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incurred in order to maintain an action against the District are: (1) to allow the District to investigate potential claims so that evidence may be gathered while still available; (2) to enable the District to correct defective conditions, thus increasing public safety; and (3) to facilitate settlement of meritorious claims and resistance of frivolous ones. *Tucci v. District of Columbia*, 2008, 956 A.2d 684. District Of Columbia ⇨ 36

Statute prohibiting suits against District of Columbia unless District is notified of injury within six months is not, and does not function as, a statute of limitations; rather, it imposes a notice requirement on everyone with a tort claim against the District of Columbia. *Brown v. District of Columbia*, 2004, 853 A.2d 733. District Of Columbia ⇨ 36

The purposes of statute prohibiting suits against District of Columbia unless District is notified of injury within six months are: (1) to allow the District to investigate potential claims so that evidence may be gathered while still available; (2) to enable the District to correct defective conditions, thus increasing public safety; and (3) to facilitate settlement of meritorious claims and resistance of frivolous ones. *Brown v. District of Columbia*, 2004, 853 A.2d 733. District Of Columbia ⇨ 36

3. Construction and application

Because District of Columbia statute requiring notice prior to filing tort action against District constitutes a departure from the common law concept of sovereign immunity, the statute is to be strictly construed, even if the result precludes a claimant's demand for compensation. *Barnhardt v. District of Columbia*, 2009, 601 F.Supp.2d 324, remanded 425 Fed.Appx. 2, 2011 WL 2651689. District Of Columbia ⇨ 36

Because of statute providing six-month period within which plaintiff must notify Mayor of claim against District of Columbia constitutes a departure from the common law concept of sovereign immunity, it is strictly construed. *Jones v. Ritter*, 2008, 587 F.Supp.2d 152. District Of Columbia ⇨ 36

Because the District of Columbia notice statute constitutes a departure from the common law concept of sovereign immunity, it is to be strictly construed against claimant, and compliance is mandatory. *Hall v. Lanier*, 2008, 583 F.Supp.2d 135. District Of Columbia ⇨ 36

Statute waiving District of Columbia's sovereign immunity is strictly construed in favor of District of Columbia. *Ibrahim v. District of Columbia*, 2008, 539 F.Supp.2d 143. District Of Columbia ⇨ 36

The content requirements of the notice given to the District of Columbia, in order to recover in suit against District, apart from the act of notice itself, are to be interpreted liberally, and in close cases courts are to resolve doubts in favor of finding compliance with the statute. *Mazloum v. District of Columbia Metropolitan Police Dept.*, 2007, 522 F.Supp.2d 24. Federal Courts ⇨ 1042

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Note 3.5

Because it is in derogation of common law principle of sovereign immunity, District of Columbia notice of claim statute is to be construed narrowly against claimants. *Kennedy v. District of Columbia Government*, 2007, 519 F.Supp.2d 50. District Of Columbia ⇨ 36

Statute requiring notice in writing within six months of event in order to maintain an action against the District of Columbia for unliquidated damages to person or property constituted a departure from the common law concept of sovereign immunity, and thus was to be strictly construed. *Cason v. D.C. Dept. of Corrections*, 2007, 477 F.Supp.2d 141, appeal dismissed 2007 WL 2892694, rehearing en banc denied. District Of Columbia ⇨ 36

Because the statute governing actions against the District of Columbia for unliquidated damages is in derogation of the common law concept of sovereign immunity, it must be strictly construed in favor of the sovereign, i.e., against waiver of immunity. *Jones v. District of Columbia*, 2004, 346 F.Supp.2d 25, affirmed in part, reversed in part and remanded 429 F.3d 276, 368 U.S.App.D.C. 279, on remand 646 F.Supp.2d 42. District Of Columbia ⇨ 36

Statute requiring advance and timely notice of an intent to assert claims against the District of Columbia represents a waiver of sovereign immunity; therefore, it is to be strictly construed and compliance with its notice requirement is mandatory. *Tibbs v. Williams*, 2003, 263 F.Supp.2d 39. District Of Columbia ⇨ 36

Provision of District of Columbia law requiring notice of claims did not apply to alleged deprivations of constitutional rights in violation of §§ 1983. *Day v. D.C. Dept. of Consumer and Regulatory Affairs*, 2002, 191 F.Supp.2d 154. District Of Columbia ⇨ 36

Statute precluding tort claim against District of Columbia unless timely written notice is given to mayor within six months of injury does not apply to claims against private sector defendants. *Parker v. Grand Hyatt Hotel*, 2000, 124 F.Supp.2d 79. Negligence ⇨ 1505; Torts ⇨ 138

Statute, requiring claimants to provide notice of a claim against the District of Columbia for damages to persons or property within six months after an injury was sustained in order to maintain a subsequent action against the District, does not waive District's sovereign immunity if the required notice is given; instead compliance with the notice statute is a condition precedent which, if not met, will prevent the destruction of sovereign immunity, and a waiver of sovereign immunity must be found in some other source. *Tucci v. District of Columbia*, 2008, 956 A.2d 684. District Of Columbia ⇨ 36

Because it is in derogation of the common law principle of sovereign immunity, the statute requiring notice of claims against the District is to be construed narrowly against claimants. *Snowder v. District of Columbia*, 2008, 949 A.2d 590. District Of Columbia ⇨ 36

Because it is in derogation of the common law principle of sovereign immunity, statute prohibiting suits against District of Columbia unless District is notified of injury within six months is to be construed narrowly against claimants. *Brown v. District of Columbia*, 2004, 853 A.2d 733. District Of Columbia ⇨ 36

Strict compliance with the terms of notice statute, which requires notice to be given to the District within six months after an injury in all actions seeking unliquidated damages against District for damages to person or property, is mandatory as a prerequisite to filing suit against the District; the notice statute is construed narrowly against claimants because it is in derogation of the common law principle of sovereign immunity. *Chidel v. Hubbard*, 2004, 840 A.2d 689. District Of Columbia ⇨ 36

Statute governing actions against District of Columbia for unliquidated damages simply required Water and Sewer Authority (WASA) to comply with all of the laws, regulations, and other obligations applicable to other agencies and instrumentalities of the District of Columbia and did not require tenant to provide pre-suit notice to mayor, prior to bringing action against WASA for alleged negligence and breach of covenant of quiet enjoyment/private nuisance. *Dingwall v. District of Columbia Water and Sewer Authority*, 2002, 800 A.2d 686. District Of Columbia ⇨ 36

Statute mandating that a person file notice with District of Columbia prior to filing suit against the District is to be construed narrowly against claimants. *Hubbard v. Chidel*, 2002, 790 A.2d 558.

In a first-party complaint, "injury" under statute mandating that a person file notice with District of Columbia prior to filing suit against the District for damages resulting from an alleged injury means at the time of the accident or damage to the plaintiff. *Hubbard v. Chidel*, 2002, 790 A.2d 558.

Wrongful termination claim by correctional officer employed by District of Columbia's Department of Corrections (DOC) was a claim for "unliquidated damages," within meaning of statute requiring notice of claim against the District for unliquidated damages; the damages were not an easily ascertainable sum certain. *Beeton v. District of Columbia*, 2001, 779 A.2d 918. District Of Columbia ⇨ 35

Statute prohibiting suits against District of Columbia unless District is notified within six months of the damage or injury is construed narrowly against claimants. *George v. Dade*, 2001, 769 A.2d 760. District Of Columbia ⇨ 36

Because it is in derogation of the common law principle of sovereign immunity, notice statute governing claims against the District of Columbia is to be construed narrowly against claimants. *District of Columbia v. Arnold & Porter*, 2000, 756 A.2d 427. District Of Columbia ⇨ 36

3.5. Construction with other laws

Discharged school teacher's failure to respond to defendant's arguments on motion to dismiss that District of Columbia Comprehensive Merit Person-

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nel Act (CMPA) provided exclusive remedy for any claim regarding retirement benefits, and that teacher failed to comply with mandatory notice requirements of CMPA prior to seeking damages for loss of retirement benefits, amounted to concession in action alleging defendant violated ADEA by terminating her employment as special education teacher with District of Columbia Public Schools (DCPS) on the basis of her age, where teacher's opposition failed to address either of District's arguments. *Kone v. District of Columbia*, 2011, 808 F.Supp.2d 80. Federal Civil Procedure ⇨ 1825

Notice statute waiving District of Columbia's sovereign immunity does not limit waiver of sovereign immunity for constitutional torts covered by §§ 1983. *Ibrahim v. District of Columbia*, 2008, 539 F.Supp.2d 143. Civil Rights ⇨ 1376(3); District Of Columbia ⇨ 36

District of Columbia's mandatory notice statute applied to District of Columbia Human Rights Act (DCHRA) claims to the extent they sought unliquidated damages, but did not apply to DCHRA claims seeking equitable relief. *Byrd v. District of Columbia*, 2008, 538 F.Supp.2d 170. District Of Columbia ⇨ 36

Complaint summary report created by District of Columbia police department after Lebanese nightclub patron complained of mistreatment in incident at nightclub with off-duty police officers provided notice of patron's potential claim under District of Columbia Human Rights Act (DCHRA), as required for patron to bring DCHRA action against District, although report did not make mention of patron's race or national origin; other documents including factual findings of police department's office of professional responsibility contained references to alleged discriminatory comments made by one officer. *Mazloun v. District of Columbia Metropolitan Police Dept.*, 2007, 522 F.Supp.2d 24. Federal Courts ⇨ 1042

Because one of the chief purposes of statute requiring that in order to maintain action against District of Columbia, written notice of approximate time, place, cause and circumstances of injury or damage serving as basis for action be provided to Mayor of District within six months after its occurrence is to provide timely notice of unliquidated damages claims against the District and because such damages are authorized under District of Columbia Human Rights Act (DCHRA), it is appropriate to subject DCHRA claims to the demands of that statute. *Kennedy v. District of Columbia Government*, 2007, 519 F.Supp.2d 50. District Of Columbia ⇨ 36

3.7. Defenses

It was not appropriate to strike defendants' defense, in response to plaintiff's claim that defendants unjustly imprisoned him in connection with wrongful conviction for rape and murder, that plaintiff might have failed to fully comply with mandatory notice requirements of District of Columbia law, as defendants were permitted to say in answer that they lacked knowledge or information

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sufficient to form belief about truth of plaintiff's allegation. *Gates v. District of Columbia*, 2011, 825 F.Supp.2d 168. Federal Civil Procedure ⇨ 1132

Defendants in suit asserting claims under the District of Columbia Human Rights Act (DCHRA) for unliquidated damages did not waive municipal notice defense, where time between the filing of plaintiffs' complaint and first invocation of defense by the defendants was just barely over a year, and during that time there was minimal activity in the case and defendants underwent a change of counsel. *Giardino v. District of Columbia*, 2008, 252 F.R.D. 18. District Of Columbia ⇨ 36

4. Necessity of notice

African-American members and officers of District of Columbia Fire and Emergency Medical Services (DCFEMS) were not exempt from statutory notice requirement for purposes of their claim for intentional infliction of emotional distress, a creation of D.C. common law. *Hamilton v. District of Columbia*, 2012, 2012 WL 1130855. District of Columbia ⇨ 36

District of Columbia Fire and Emergency Medical Services (DCFEMS) sergeant's failure to provide notice of negligence claim to Mayor of District of Columbia would only bar unliquidated portion of damages he requested in complaint, i.e., those based on "emotional distress, pain, suffering and humiliation," and it did not bar his claim for lost wages, request for "declaratory and injunctive relief concerning the illegal nature of the policies and practices" at issue, and his request for award of attorney fees and litigation-related costs. *Lindsey v. District of Columbia*, 2011, 810 F.Supp.2d 189. District of Columbia ⇨ 36

While compliance with District of Columbia Code section requiring written notice to Mayor of District of Columbia within six months after injury or damage was sustained of approximate time, place, cause, and circumstances of injury or damages is mandatory prerequisite for filing suit against District for unliquidated damages, failure to give notice under that section does not bar claims for liquidated damages. *Lindsey v. District of Columbia*, 2011, 810 F.Supp.2d 189. District of Columbia ⇨ 36

Former District of Columbia employee's claims for reinstatement without a break in service, back pay and for an injunction in her action alleging her termination violated the District of Columbia Human Rights Act (DCHRA) were liquidated damages that did not require providing written notice of claim to the mayor's office under District of Columbia law. *Blocker-Burnette v. District of Columbia*, 2010, 730 F.Supp.2d 200. District Of Columbia ⇨ 36

Disputes as to whether District of Columbia received actual notice of potential tort plaintiff's claims are an area where no bright line tests are applicable and courts must resolve them on a case-by-case basis. *Clark v. Flach*, 2009, 604 F.Supp.2d 1. District Of Columbia ⇨ 36

Compliance with requirement that potential tort plaintiffs give written notice to District of Columbia within six months of an injury in order to bring suit is mandatory and, because it is in derogation of the common law principle of sovereign immunity, it is construed narrowly against claimants. *Clark v. Flach*, 2009, 604 F.Supp.2d 1. District Of Columbia ⇨ 36

Purpose of requirement that potential tort plaintiffs give written notice to District of Columbia within six months of an injury in order to bring suit is to give reasonable notice to District so that the facts may be ascertained and, if possible, deserving claims adjusted and meritless claims resisted. *Clark v. Flach*, 2009, 604 F.Supp.2d 1. District Of Columbia ⇨ 36

District of Columbia did not have notice of claim alleging gross negligence by District's police officers and employees in pursuing stolen car at high speeds through crowded streets and in failing to properly hire, train, and control officers, which gross negligence allegedly resulted in injury to passenger when car crashed into vehicle in which passenger was riding, and thus passenger's claim against District would be dismissed, where passenger did not provide required written notice to District within six months of injury before bringing suit and police reports and event chronology created contemporaneously with accident failed to reveal basis for District's potential liability, as would have provided District with actual notice. *Clark v. Flach*, 2009, 604 F.Supp.2d 1. Automobiles ⇨ 230

Because courts are not at liberty to construe District of Columbia statute governing notice requirements for claims of unliquidated damages against the District other than according to its terms, or to depart from its clear requirements, notice is fatally defective if one or more of the statutory elements is lacking. *Hall v. Lanier*, 2008, 583 F.Supp.2d 135. District Of Columbia ⇨ 36

Notice under statute waiving District of Columbia's sovereign immunity is a precondition to a common-law tort claim against District of Columbia. *Ibrahim v. District of Columbia*, 2008, 539 F.Supp.2d 143. District Of Columbia ⇨ 36

Prisoner's admitted failure to send notice of his common-law tort claims to mayor of District of Columbia, as required by statute waiving District of Columbia's sovereign immunity, necessitated dismissal of prisoner's claims for negligence, medical malpractice, and intentional infliction of emotional distress. *Ibrahim v. District of Columbia*, 2008, 539 F.Supp.2d 143. District Of Columbia ⇨ 36

Under District of Columbia law, fulfillment of requirements of notice of claim statute is condition precedent to any right of action or entitlement to maintain action for tort damages against District. *Plater v. District of Columbia Dept. of Transp.*, 2008, 530 F.Supp.2d 101. District Of Columbia ⇨ 36

Failure to comply with District of Columbia notice of claim statute barred black Metropolitan

Police Department (MPD) employee's District of Columbia Human Rights Act (DCHRA) claim arising out of her failure to be promoted to Permanent Program Manager position; employee's letter to Mayor, MPD and Office of the Attorney General alleged only that District engaged in racial discrimination when it named white employee as Acting Program Manager, and employee was not in fact denied promotion to Permanent Program Manager position until two months later. *Kennedy v. District of Columbia Government*, 2007, 519 F.Supp.2d 50. District Of Columbia ⇨ 36

District of Columbia police department's incident-based event report, which was prepared only minutes after pre-trial detainee committed suicide, was sufficient to satisfy District of Columbia's notice requirement, requiring that within six months of injury, the mayor had to be notified in writing of the injury, given that the report described the stop, search, and arrest of pre-trial detainee, stated the time detainee was found in his cell hanging from the bars by a makeshift noose made from his socks, and continued that detainee was taken to the medical examiner and pronounced dead, for purposes of suit brought by mother of pre-trial detainee alleging police officers violated pre-trial detainee's constitutional rights, as well as generic tort claims based on statute and the common law. *Powers-Bunce v. District of Columbia*, 2007, 479 F.Supp.2d 146. District Of Columbia ⇨ 36

Failure of a nightclub patron to comply with a statutory notice requirement defeated her tort claims against District of Columbia officials. *Edwards v. Okie Dokie, Inc.*, 2007, 473 F.Supp.2d 31. District Of Columbia ⇨ 36

Former inmate's failure to provide written notice to District of Columbia within six months of incident of time, place, cause, and circumstances of alleged incident in which he was sexually assaulted by another inmate in District correctional facility, as required by District Code provision, precluded former inmate from bringing action against District for negligence and negligent infliction of emotional distress. *Hunter v. Corrections Corp. of America*, 2006, 441 F.Supp.2d 78. District Of Columbia ⇨ 36

Compliance with Tort Claims Act's notice requirement is mandatory as prerequisite to filing tort action against District of Columbia. *R. v. District of Columbia*, 2005, 370 F.Supp.2d 267. District Of Columbia ⇨ 36

Compliance with six-month statutory notice requirement for filing action against District of Columbia for unliquidated damages is mandatory. *McRae v. Olive*, 2005, 368 F.Supp.2d 91. District Of Columbia ⇨ 36

Unless it demonstrates compliance with the requirements of notice of claim statute, a plaintiff's suit against the District is properly dismissed. *Snowder v. District of Columbia*, 2008, 949 A.2d 590. District Of Columbia ⇨ 36

District was prejudiced by the failure by family, which had brought false arrest claims against Dis-

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trict and police officer, to put it on notice that the initial stop of son was part of the false arrest claim, and thus, trial court was entitled to set aside damages award to son based on the initial stop, where the family's complaint contained only one sentence regarding the initial stop, the letter notifying the District of the family's claims focused on the arrests made outside the family's home and did not mention the initial stop of son, and the joint pretrial statement focused on the events outside the home and did not mention the initial stop. *Tolson v. District of Columbia*, 2004, 860 A.2d 336. District Of Columbia ⇨ 1052.1

Compliance with statute prohibiting suits against District of Columbia unless District is notified of injury within six months is mandatory as a prerequisite for filing suit against the District. *Brown v. District of Columbia*, 2004, 853 A.2d 733. District Of Columbia ⇨ 36

Compliance with terms of statute mandating that a person file notice with District of Columbia prior to filing suit against the District is mandatory as a prerequisite to filing suit against the District. *Hubbard v. Chidel*, 2002, 790 A.2d 558.

Compliance with statute requiring notice of claim against District of Columbia for unliquidated damages to persons or property is mandatory, and thus, failure to comply with the statute bars the claim. *Beeton v. District of Columbia*, 2001, 779 A.2d 918. District Of Columbia ⇨ 35

Compliance with the terms of notice statute is a mandatory prerequisite to filing suit against the District of Columbia for unliquidated damages to person or property. *George v. Dade*, 2001, 769 A.2d 760. District Of Columbia ⇨ 36

Compliance with notice requirement for action against the District of Columbia is mandatory in actions to which the statute applies. *Dingwall v. District of Columbia Water and Sewer Authority*, 2001, 766 A.2d 974, rehearing granted, opinion vacated 773 A.2d 423, rehearing granted, opinion vacated 800 A.2d 686. District Of Columbia ⇨ 36

Unless it demonstrates compliance with the requirements of the notice statute, a plaintiff's suit against the District of Columbia is properly dismissed because no right of action or entitlement to maintain an action accrues. *District of Columbia v. Arnold & Porter*, 2000, 756 A.2d 427. District Of Columbia ⇨ 36

Radiologist was required to give separate, timely notice to District of Columbia of his claim for contribution, which was based on allegation that District's operation of clinic where patient was treated was negligent, where radiologist was party to patient's malpractice action from the beginning. *Hubbard v. Chidel*, 131 WLR 425 (Super. Ct. 2003).

As a result of failure of radiologist to give separate, timely notice to District of Columbia of his claim for contribution, which was based on allegation that District's operation of clinic where patient was treated was negligent, radiologist could assert no claim for contribution against District and could only assert claim against patient's primary care

physician. *Hubbard v. Chidel*, 131 WLR 425 (Super. Ct. 2003).

5. Actions requiring notice

Employee sought unliquidated damages, and therefore, dismissal of employee's action against employer under the District of Columbia Human Rights Act (DCHRA) was warranted, where employee sought compensatory damages for pain and suffering, and failed to give required notice under District of Columbia notice statute. *Elzeneiny v. District of Columbia*, 2010, 699 F.Supp.2d 31. District Of Columbia ⇨ 36

Compliance with notice requirements is a mandatory prerequisite to filing a tort action against the District of Columbia. *Barnhardt v. District of Columbia*, 2009, 601 F.Supp.2d 324, remanded 425 Fed.Appx. 2, 2011 WL 2651689. District Of Columbia ⇨ 36

District of Columbia notice provisions as to actions for unliquidated damages against the District did not operate as a bar on terminated court employee's wrongful termination claim, to the extent that the relief sought by employee was easily ascertainable, in the form of back pay and benefits. *Chisholm v. District of Columbia*, 2008, 533 F.Supp.2d 175. District Of Columbia ⇨ 36

District of Columbia employees were required to provide notice to Mayor prior to bringing claims based on District of Columbia Human Rights Act (DCHRA), as those claims were not creations of federal law. *Giardino v. District of Columbia*, 2007, 505 F.Supp.2d 117. District Of Columbia ⇨ 36

Vehicle owners' claims against the District of Columbia arising from costs of towing and storage of their vehicles without adequate notice, alleging breach of bailment, conversion, and civil conspiracy, were unliquidated and, thus, were subject to the statute requiring notice to the District of intent to sue. *Snowder v. District of Columbia*, 2008, 949 A.2d 590. District Of Columbia ⇨ 36

Patient was not required to give notice to the District of Columbia before bringing medical malpractice suit against physician in his individual capacity, even though the District was required to indemnify him as a medical employee. *George v. Dade*, 2001, 769 A.2d 760. District Of Columbia ⇨ 36

When the District of Columbia must indemnify a medical employee sued in his individual capacity for medical negligence committed within the scope of his employment, the complainant is not required to give notice of the claim to the District within six months after the injury or damage was sustained. *George v. Dade*, 2001, 769 A.2d 760. District Of Columbia ⇨ 36

District of Columbia Water and Sewer Authority (WASA) was a separate corporate entity that was amenable to suit in its own name, and thus action against WASA was not an action against the District of Columbia that would require pre-suit notice. *Dingwall v. District of Columbia Water and Sewer Authority*, 2001, 766 A.2d 974, rehearing granted, opinion vacated 773 A.2d 423, rehearing granted,

opinion vacated 800 A.2d 686. District Of Columbia ⇨ 36

6. Requisites of notice generally

Expert testimony was not required for sergeant in District of Columbia Fire and Emergency Medical Services (DCFEMS) to establish prima facie case of negligence against District in connection with its alleged failure to comply with either federal antidiscrimination laws or DCFEMS Department's rules, regulations, procedures, and laws in effect at the time of alleged discrimination, and in fact neither technical background nor sophisticated professional judgment was necessary to determine whether District engaged in age discrimination because jurors were regularly called upon by courts to make such determinations without expert testimony. *Lindsey v. District of Columbia*, 2011, 810 F.Supp.2d 189. District of Columbia ⇨ 36

To comply with notice provisions of District of Columbia's Tort Claims Act, District must be apprised of approximate time, place, cause, and circumstances of injury or damage. *R. v. District of Columbia*, 2005, 370 F.Supp.2d 267. District Of Columbia ⇨ 36

That citizens complained, that public employees reported the incident, and that a slew of suits and letters were timely filed did not provide statutory notice to the District of Columbia of business entities' claims for damages for District's alleged negligence in the rupture of a water main pipe. *District of Columbia v. Arnold & Porter*, 2000, 756 A.2d 427. District Of Columbia ⇨ 36

7. Timeliness of notice generally

District of Columbia's Whistleblower Act required former District of Columbia school district employee to give notice to Mayor of approximate time, place, cause, and circumstances of injury or damage within six months of his injury in order to maintain an action under the Act; Act's notice requirement did not apply only to actions for unliquidated damages. *Winder v. Erste, C.A.D.C.* 2009, 566 F.3d 209, 386 U.S.App.D.C. 26, rehearing en banc denied, on remand 767 F.Supp.2d 179. District Of Columbia ⇨ 36

Student's common law claims against District of Columbia for negligent supervision, negligent hiring and retention, intentional infliction of emotional distress, and breach of fiduciary duty were barred by her failure to provide timely notice to District, compliance with which was mandatory prerequisite for everyone with tort claim against District of Columbia. *Blue v. District of Columbia*, 2012, 2012 WL 746400. District of Columbia ⇨ 36

Notice to District of Columbia by female African-American teacher alleging employment discrimination on basis of race, color and gender was untimely under statute setting forth six-month notice requirement for persons considering personal injury or property damage claim against District of Columbia; although teacher filed her letter to District of Columbia only few days after deadline, six-month timeframe was to be read strictly and narrowly against her under District of Columbia law.

Bowers v. District of Columbia, 2011, 2011 WL 2160945. District of Columbia ⇨ 36

Discharged employee of the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) was required to provide notice of his claims against District of Columbia under District of Columbia Whistleblower Protection Act (DCWPA) within six months after alleged injury or damage was sustained. *Payne v. District of Columbia*, 2010, 741 F.Supp.2d 196, motion to amend denied 808 F.Supp.2d 164. District Of Columbia ⇨ 36

District of Columbia employees' claims against District of Columbia under the District of Columbia's Whistleblower Protection Act (DCWPA) were barred by statutory provision requiring six months notice prior to suing the District for unliquidated damages, where employees asserted to the court that they were informed by their former counsel that he had provided timely notice of their claims, but two years passed without their having provided any supplemental evidence to corroborate that they did in fact submit the necessary notices. *Booth v. District of Columbia*, 2010, 701 F.Supp.2d 73. District Of Columbia ⇨ 36

Former arrestee's notice of common law tort claims against District of Columbia for alleged injury to property seized from his vehicle by police officers was untimely filed more than six months after date on which his property was allegedly destroyed, thus precluding arrestee's negligence and conversion claims. *Barnhardt v. District of Columbia*, 2009, 601 F.Supp.2d 324, remanded 425 Fed.Appx. 2, 2011 WL 2651689. District Of Columbia ⇨ 36

Plaintiffs' allegations that police officers repeatedly subjected him to threats of bodily injury, assaults, batter, illegal detainment, illegal searches and seizures, and violations of his right to speech, did not satisfy mandatory notice requirements for claims of unliquidated damages against District of Columbia; allegations that were not barred by six-month limitation period lacked requisite specificity of time and place to provide District with sufficient notice to investigate the claims. *Hall v. Lanier*, 2008, 583 F.Supp.2d 135. District Of Columbia ⇨ 36

District of Columbia statute, precluding common law action for wrongful termination when notice of injury was not given within six months of occurrence, did not apply to claims that federal constitutional or statutory rights were violated, made under §§ 1983. *Bowie v. Gonzales*, 2006, 433 F.Supp.2d 24, affirmed in part 642 F.3d 1122, 395 U.S.App.D.C. 301, rehearing en banc denied, rehearing denied 653 F.3d 45, 397 U.S.App.D.C. 357, certiorari denied 132 S.Ct. 1636. District Of Columbia ⇨ 7

Failure to provide notice of circumstances of injury or damage within six months, as required by District of Columbia statute, precluded claim of wrongful termination made by former employee of District Office of Inspector General, under District of Columbia common law. *Bowie v. Gonzales*,

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2006, 433 F.Supp.2d 24, affirmed in part 642 F.3d 1122, 395 U.S.App.D.C. 301, rehearing en banc denied, rehearing denied 653 F.3d 45, 397 U.S.App. D.C. 357, certiorari denied 132 S.Ct. 1636. District Of Columbia ⇨ 7

Inmate's injury from the District of Columbia's failure to diagnose his condition was not his actual death, but, rather, when his condition worsened, and inmate's condition worsened when he was admitted to the emergency room, and because notice of injury was not provided to the District until six months and one day after date that inmate's injury worsened, notice of injury was untimely, and suit was barred pursuant to statute prohibiting suits against District of Columbia unless District is notified of injury within six months. *Brown v. District of Columbia*, 2004, 853 A.2d 733. Health ⇨ 807

When circumstances require compliance with notice statute, which requires notice to be given to the District within six months after an injury in all actions seeking unliquidated damages against District for damages to person or property, a party seeking contribution from the District who fails to notify the District of his claim may not rely upon his employer's subsequent timely notice to bring a claim against the District. *Chidel v. Hubbard*, 2004, 840 A.2d 689. District Of Columbia ⇨ 36

Radiologist's employer's timely notice of claim against District, under statute that required notice to be given to the District within six months after an injury in all actions seeking unliquidated damages against District for damages to person or property, did not serve to retroactively notify the District of radiologist's intent to sue District in order to seek contribution in medical malpractice action. *Chidel v. Hubbard*, 2004, 840 A.2d 689. District Of Columbia ⇨ 36

Business entity's claim for damages against the District of Columbia, for its alleged negligence in the rupture of a water main pipe, was properly dismissed, as it was filed after expiration of the mandatory statutory notice period. *District of Columbia v. Arnold & Porter*, 2000, 756 A.2d 427. District Of Columbia ⇨ 36

Motorist's right to maintain an action against District of Columbia for contribution or indemnification would not mature or vest until a judgment was rendered against her and in favor of other motorist involved in automobile accident and, thus, provision of statute governing actions against District for unliquidated damages, requiring notice within six months after the injury or damage was sustained, had not begun to run. *Rodriguez v. Crowley*, 129 WLR 2453 (Super. Ct. 2001).

8. Accrual of claim

Sixty-one-year-old employee of Child Support Services Division (CSSD) of District of Columbia Officer of Attorney General, who was not selected for promotions from DS-11 level to DS-12 level, was required, under District of Columbia Human Rights Act (DCHRA), to notify mayor of her alleged injury within six months of her non-selection, as prerequisite to filing action under Age Discrimi-

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nation in Employment Act (ADEA) against District of Columbia. *Faison v. District of Columbia*, 2009, 664 F.Supp.2d 59. District Of Columbia ⇨ 36

Plaintiff's civil rights action against District of Columbia and police department accrued, and statute of limitations began to run, when injury or damage was sustained. *Hall v. Lanier*, 2008, 583 F.Supp.2d 135. Limitation Of Actions ⇨ 58(1)

District of Columbia (DC) did not waive affirmative defenses, based on notice requirements and statutes of limitations, to former employee's disability discrimination claims under Rehabilitation Act and DC's Human Rights Act (HRA) by failing to assert either defense in answer to amended complaint and instead waiting two years before raising defenses for the first time in DC's summary judgment motion; employee had and exercised a full and fair opportunity to respond to DC's tardy invocation of those defenses and was therefore not prejudiced. *Jaiyeola v. District of Columbia*, 2012, 40 A.3d 356. District of Columbia ⇨ 36; Limitation of Actions ⇨ 182(5)

Because patients in a failure to diagnose case generally suffer from an ailment when they first seek treatment, the injury in these cases is the worsening or deterioration of the patient's condition that results from the physician's failure to diagnose the patient's medical condition for purposes of determining when statutory 6 month notice period begins to run when claimant sues the District of Columbia pursuant to statute prohibiting suits against District of Columbia unless District is notified of injury within six months. *Brown v. District of Columbia*, 2004, 853 A.2d 733. Health ⇨ 807

An injury that results from a physician's negligent failure to diagnose a medical condition occurs when the patient's condition worsens as a result of the physician's negligence for purposes of determining when statutory 6 month notice period begins to run when claimant sues the District of Columbia pursuant to statute prohibiting suits against District of Columbia unless District is notified of injury within six months. *Brown v. District of Columbia*, 2004, 853 A.2d 733. Health ⇨ 807

Unlike a statute of limitations, which can be tolled through the discovery rule, statute prohibiting suits against District of Columbia unless District is notified of injury within six months starts the clock at the instant an injury or damage is sustained. *Brown v. District of Columbia*, 2004, 853 A.2d 733. District Of Columbia ⇨ 36

The date of injury is not when the claimant knew or should have known of his injury, but, rather, when that injury was actually sustained for purposes of determining when statutory 6 month notice period begins to run when claimant sues the District of Columbia pursuant to statute prohibiting suits against District of Columbia unless District is notified of injury within six months. *Brown v. District of Columbia*, 2004, 853 A.2d 733. District Of Columbia ⇨ 36

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A defendant who wishes to bring a complaint against the District of Columbia as a third party is "injured" for purposes of statute requiring notice to the District of a complaint for damages within six months after the injury or damage was sustained, when he or she has been served with the plaintiff's complaint for damages. *Hubbard v. Chidel*, 2002, 790 A.2d 558. District Of Columbia ⇨ 36

Six month time period in which radiologist's employer was required to give notice of its contribution claim against District of Columbia began when employer was added to patient's malpractice complaint and given notice of that complaint, and thus employer's notice was timely. *Hubbard v. Chidel*, 2002, 790 A.2d 558.

9. Tolling of time

Unlike a statute of limitations, which can be tolled through the discovery rule, District of Columbia's statute requiring notice, within six months after injury or damage was sustained, as prerequisite to filing tort action against District starts the clock at the instant an injury or damage is sustained. *Barnhardt v. District of Columbia*, 2009, 601 F.Supp.2d 324, remanded 425 Fed.Appx. 2, 2011 WL 2651689. District Of Columbia ⇨ 36

11. Manner of notice

Former District of Columbia employee did not provide notice to the mayor of her claims for unliquidated damages arising from alleged violations of the District of Columbia Human Rights Act (DCHRA) in her termination, as required by District of Columbia law, where employee sent letter to her department's Equal Employment Opportunity Commission (EEOC) office and to the District's Office of Human Rights (OHR) via the internet, but not in writing to the mayor. *Blocker-Burnette v. District of Columbia*, 2010, 730 F.Supp.2d 200. District Of Columbia ⇨ 36

District of Columbia police officer's letter alleging intentional infliction of emotional distress and other torts and submitted to police chief, District's corporation counsel, and other individuals, but not to mayor, did not satisfy requirements of statute requiring notice to mayor of possible litigation. *Brown v. District of Columbia*, 2003, 251 F.Supp.2d 152. District Of Columbia ⇨ 36

In accordance with statute requiring claimant to file notice with mayor prior to filing lawsuit seeking unliquidated damages against District of Columbia, wife of hotel restaurant patron who was arrested in connection with officers' attempt to remove him from restaurant was required to file notice with respect to her common-law claims of negligent supervision and intentional and negligent infliction of emotional distress; filing requirement was not satisfied by patron's notice. *Parker v. Grand Hyatt Hotel*, 2000, 124 F.Supp.2d 79. District Of Columbia ⇨ 36

12. Actual notice

Knowledge that the District might have acquired about the medical malpractice case against doctor, clinic, radiologist, and radiologist's employer

through its representation of doctor did not excuse radiologist, who filed third-party complaint against District, from compliance with the formal notice requirement of statute, which required notice to be given to the District within six months after an injury in all actions seeking unliquidated damages against District for damages to person or property. *Chidel v. Hubbard*, 2004, 840 A.2d 689. District Of Columbia ⇨ 36

13. Contents of notice—In general

Motion to amend prior ruling barring District of Columbia Whistleblower Protection Act (WPA) claims on basis of "other reason that justifies relief," over 13 months after amendment to eliminate pre-suit notice provision became effective, had been brought within reasonable time, since parties were still in discovery and defendants had not claimed that they were prejudiced by reinstatement of plaintiffs' claims. *Bowyer v. District of Columbia*, 2011, 779 F.Supp.2d 159. Federal Civil Procedure ⇨ 1841

Reinstatement of previously barred claims under District of Columbia Whistleblower Protection Act (WPA), after elimination of pre-suit notice provision, was necessary to accomplish justice, on motion to amend prior ruling on basis of "other reason that justifies relief," particularly given that plaintiffs' remaining WPA claims were still pending, parties had yet to conclude discovery, and District of Columbia Council had indicated that elimination of pre-suit notice requirement for WPA claims was intended to facilitate such claims. *Bowyer v. District of Columbia*, 2011, 779 F.Supp.2d 159. Federal Civil Procedure ⇨ 1840

Elimination of pre-suit notice provision through District of Columbia Whistleblower Protection Amendment Act was procedural change that had to be applied to pending actions and claims under Whistleblower Protection Act (WPA), since amendment did not enlarge scope of cause of action, alter District's responsibilities, or increase District's liability; although waivers of sovereign immunity had to be clearly expressed, District waived such immunity when it first enacted WPA. *Bowyer v. District of Columbia*, 2011, 779 F.Supp.2d 159. District Of Columbia ⇨ 36

Under District of Columbia law, employee with District of Columbia Metropolitan Police Department (MPD) was required to give notice to Mayor of approximate time, place, cause, and circumstances of injury or damage within six months of his injury, and prior to filing suit, in order to maintain intentional infliction of emotional distress (IIED) claim. *McGee v. District of Columbia*, 2009, 646 F.Supp.2d 115, reconsideration denied 723 F.Supp.2d 161, affirmed 2010 WL 5140452, rehearing en banc denied. District Of Columbia ⇨ 36

In order for District of Columbia police report to qualify as actual notice to District of potential tort plaintiff's claim, report must contain information as to time, place, cause and circumstances of injury or damage with at least the same degree of specificity required of written notice of claim, and must also

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provide the requisite information with enough particularity that it could be reasonably anticipated that a claim against the District might arise. *Clark v. Flach*, 2009, 604 F.Supp.2d 1. District Of Columbia ⇨ 36

A potential litigant against District of Columbia must provide an early warning to District of Columbia officials regarding litigation likely to occur in the future. *Jones v. Ritter*, 2008, 587 F.Supp.2d 152. District Of Columbia ⇨ 36

Compliance with the District of Columbia Human Rights Act's notice requirement is mandatory and a prerequisite to filing a suit against the District of Columbia, because it represents a waiver of sovereign immunity. *Johnson v. District of Columbia*, 2008, 572 F.Supp.2d 94, amended on reconsideration in part 632 F.Supp.2d 20. District Of Columbia ⇨ 36

To satisfy requirements of District of Columbia notice of claim statute, individual's written notice must disclose both factual cause of injury and a reasonable basis for anticipating legal action as a consequence. *Kennedy v. District of Columbia Government*, 2007, 519 F.Supp.2d 50. District Of Columbia ⇨ 36

District of Columbia police officer's letter alleging intentional infliction of emotional distress and other torts and submitted to police chief, District's corporation counsel, and other individuals, but not to mayor, did not satisfy requirements of statute requiring notice to mayor of possible litigation. *Brown v. District of Columbia*, 2003, 251 F.Supp.2d 152. District Of Columbia ⇨ 36

A plaintiff bringing claims under the District of Columbia Human Rights Act (DCHRA) for unliquidated damages is not excused from providing prior notice of the claims pursuant to the District of Columbia municipal notice statute. *Giardino v. District of Columbia*, 2008, 252 F.R.D. 18. District Of Columbia ⇨ 36

Compliance with the statutory notice requirement is mandatory in order for a claimant to maintain an action against the District of Columbia. *Tucci v. District of Columbia*, 2008, 956 A.2d 684. District Of Columbia ⇨ 36

14. — Specificity and completeness, contents of notice

Letter sent by inmate to District of Columbia mayor, although clearly intended to constitute notice of inmate's upcoming lawsuit stemming from an injury to his eye, was defective for purposes of statute requiring notice in writing within six months of event in order to maintain an action against the District, since letter failed to state the place, cause and circumstances of his injury. *Cason v. D.C. Dept. of Corrections*, 2007, 477 F.Supp.2d 141, appeal dismissed 2007 WL 2892694, rehearing en banc denied. District Of Columbia ⇨ 36

16. — Time and place, contents of notice

Discharged District of Columbia Office of Property Management (OPM) employee's letter to mayor informing District of his retaliation claims under

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District of Columbia Human Rights Act (DCHRA) arising from his non-selection for position as management analysis officer with OPM was insufficient to fulfill District's pre-suit notice requirement, since position was not filled until one week after employee sent letter, and at time letter was sent, employee still appeared on selection certificate for job. *Francis v. District of Columbia*, 2010, 731 F.Supp.2d 56. District Of Columbia ⇨ 36

Arrestee's common law claims against the District of Columbia for malicious prosecution and intentional infliction of emotional distress were barred because arrestee failed to satisfy the statutory mandatory notice requirement for maintaining such claims against the District; although arrestee's attorney mailed a notice letter to the District of Columbia within the statutory notice period, the letter did not indicate the location of the incident underlying the arrestee's claims. *Harris v. District of Columbia*, 2010, 696 F.Supp.2d 123, reconsideration denied 756 F.Supp.2d 25. District Of Columbia ⇨ 36

18. — Sufficiency generally, contents of notice

Detective's notice letter to District of Columbia (D.C.) did not provide D.C. with reasonable basis that she intended to pursue defamation, malicious prosecution, intentional infliction of emotional distress and conspiracy to commit tortious acts causes of action under D.C. law against D.C., where notice did not set forth time, place, cause and circumstances of claims. *Bonaccorsy v. District of Columbia*, 2010, 685 F.Supp.2d 18. District Of Columbia ⇨ 36

District of Columbia high school principal gave notice of her intention to file claim as required by statute requiring written notice within six months of event in order to maintain action for unliquidated damages against District; principal's letter clearly warned District officials that litigation was likely to occur in the future, and District had sufficient time to conduct early investigation of facts and circumstances surrounding her claims. *Musgrove v. Government of Dist. of Columbia*, 2009, 602 F.Supp.2d 141. District Of Columbia ⇨ 36

District of Columbia police report, along with transit authority's letter explaining the circumstances in which District faced potential claim by personal representative for deadly collision between pedestrian and bus, were sufficient to place District on notice of personal representative's negligence claim against city, arising out of alleged defects in design or maintenance of no left turn traffic signs at subject location; police report and letter gave no doubt that personal representative could potentially file a claim against the District, as the police report identified the approximate time and place of the incident, and transit authority's letter explained the circumstances in which the District faced a potential claim. *Sperling ex rel. Estate of Oxlaj-Gonzales v. Washington Metropolitan Area Transit Authority*, 2008, 542 F.Supp.2d 76. District Of Columbia ⇨ 36

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District of Columbia employee's letter to a mayor describing an official's public statements and the end of the employee's employment, and asserting that the "public bashing" was causing him problems in obtaining other employment, was sufficient to notify the District of its potential liability, for purposes of a notice of claim statute. *Evans v. District of Columbia*, 2005, 391 F.Supp.2d 160. District Of Columbia ⇨ 36

Under District of Columbia law, notice under Tort Claims Act need only furnish reasonable guide for inspection and provide early warning to District of Columbia officials regarding litigation likely to occur in future. *R. v. District of Columbia*, 2005, 370 F.Supp.2d 267. District Of Columbia ⇨ 36

Business owner's undated letter to mayor of District of Columbia through his counsel, giving notice of his intent to assert claims arising out of assault, negligence, theft and intentional infliction of emotional distress because agents of the District physically entered his premises and unlawfully seized and removed personal effects, which letter also contained a list of items removed with a dollar value for each, was sufficient to put District of Columbia on notice of business owner's allegations of tortious interference with customer relations, as required by statute. *Tibbs v. Williams*, 2003, 263 F.Supp.2d 39. District Of Columbia ⇨ 36

Former employee who sought nonliquidated damages for pain and suffering in disability discrimination claims against District of Columbia (DC) under DC's Human Rights Act (HRA) was not relieved from HRA's notice requirements on basis that he named the Public Service Commission (PSC), for which he had worked as pipeline safety engineer, as a defendant; Congress had not created the PSC as an entity separate and apart from the DC government or given the PSC the general power to sue or be sued in its own name. *Jaiyeola v. District of Columbia*, 2012, 40 A.3d 356. District of Columbia ⇨ 36

Letter from motorist to Mayor of District of Columbia, indicating that motorist intended to file false arrest claim against District in connection with his arrest in traffic incident, along with police report of arrest, provided sufficient notice to satisfy statutory requirement that notice be given within six months after injury was sustained to permit suit against District. *Enders v. District of Columbia*, 2010, 4 A.3d 457. District Of Columbia ⇨ 36

Notice of claim against the District, by two vehicle owners who alleged damages arising from costs of towing and storing vehicles without adequate notice, was not sufficient to give the District statutorily required notice of claims of other named parties to the lawsuit, where neither notice mentioned the claims of others. *Snowder v. District of Columbia*, 2008, 949 A.2d 590. District Of Columbia ⇨ 36

Vehicle owners' stolen vehicle police reports did not provide sufficient notice of their intent to sue the District for damages arising from costs of towing and storage of their vehicles without ade-

quate notice, as required under the notice of claim statute; the injury detailed in the reports was not the injury complained of in the lawsuit, and the reports did not establish a reasonable basis for anticipating legal action. *Snowder v. District of Columbia*, 2008, 949 A.2d 590. District Of Columbia ⇨ 36

Radiologist's employer's notice to District, under statute that required notice to be given to the District within six months after an injury in all actions seeking unliquidated damages against District for damages to person or property, was insufficient to permit a claim regarding the District's alleged negligent operation of clinic, where notice made absolutely no mention of the District's alleged negligent operation of clinic, but rather stated that liability in medical malpractice suit rested with doctor employed by clinic that was operated by District. *Chidel v. Hubbard*, 2004, 840 A.2d 689. District Of Columbia ⇨ 36

Although the content requirements of a notice under statute, which requires notice to be given to the District within six months after an injury in all actions seeking unliquidated damages against District for damages to person or property, are to be interpreted liberally, the notice must be specific with respect to the cause and circumstances of the injury; to be sufficient, the notice must describe the injuring event with sufficient detail to reveal, in itself, a basis for the District's potential liability. *Chidel v. Hubbard*, 2004, 840 A.2d 689. District Of Columbia ⇨ 36

Contribution notice sent by radiologist's employer in timely manner to District of Columbia regarding patient's primary care physician, a District employee, was also sufficient as notice to District of claim that District's operation of clinic where patient was treated was negligent, where issue of clinic's negligence in failing to properly diagnose patient's breast cancer was in case from start, such that District had adequate notice of approximate time, place, cause, and circumstances of alleged injury. *Hubbard v. Chidel*, 131 WLR 425 (Super. Ct. 2003).

As result of determination that contribution notice sent by radiologist's employer to District of Columbia was sufficient as notice to District of claim that District's operation of clinic where patient was treated was negligent, radiologist's employer was entitled to pro rata contribution from other two tortfeasors, in determining extent of its liability for judgment in favor of patient. *Hubbard v. Chidel*, 131 WLR 425 (Super. Ct. 2003).

Report completed by motorists after automobile accident and submitted to the Department of Public Works was insufficient to provide the notice to District of Columbia required by statute governing actions against District for unliquidated damages; report was not submitted to mayor, was not a written report of the metropolitan police department, and, although it stated name, time, and location of accident and gave names of parties and alleged damage to their vehicles, did not indicate basis for District's liability. *Rodriguez v. Crowley*, 129 WLR 2453 (Super. Ct. 2001).

19. Police reports—In general

While a police report can satisfy District of Columbia's statutory notice requirement for common law tort claims, it does so only if it asserts facts from which the District could reasonably anticipate that a claim against the District would arise from a plaintiff; the existence of a police report, therefore, does not necessarily mean that the District has received the actual notice which the statute contemplates. *Martin v. District of Columbia*, 2010, 720 F.Supp.2d 19. District Of Columbia ⇨ 36

A police report is an alternative form of notice added under statute requiring notice to District of Columbia in order to recover in suit against District to take care of those instances in which actual notice is had by the District from the police department, although technical notice may not have been filed by the person injured. *Mazloum v. District of Columbia Metropolitan Police Dept.*, 2007, 522 F.Supp.2d 24. Federal Courts ⇨ 1042

24. — Sufficiency generally, police reports

Police report of arrest did not provide notice to District of Columbia of potential tort claims by arrestee as required to satisfy District of Columbia statutory notice requirement, where report suggested a lawful arrest, and contained no reference to any assault or injury of arrestee. *Martin v. District of Columbia*, 2010, 720 F.Supp.2d 19. District Of Columbia ⇨ 36

When evaluating content of District of Columbia police report to determine whether it provides actual notice to District of potential tort plaintiff's claims, courts must interpret notice requirements liberally and resolve close cases in favor of finding compliance with requirements. *Clark v. Flach*, 2009, 604 F.Supp.2d 1. District Of Columbia ⇨ 36

The inquiry with respect to a police report's capacity to satisfy statute providing six-month period within which plaintiff must notify Mayor of claim against District of Columbia is whether the District should have anticipated, as a consequence of receiving the police reports, that a complaint by plaintiff would be forthcoming. *Jones v. Ritter*, 2008, 587 F.Supp.2d 152. District Of Columbia ⇨ 36

Police report prepared by officer regarding arrest during which officers allegedly use excessive force satisfied requirements of statute providing six-month period within which plaintiff must notify Mayor of claim against District of Columbia, where report provided the approximate time, place, cause, and circumstances of the injuries arrestee suffered. *Jones v. Ritter*, 2008, 587 F.Supp.2d 152. District Of Columbia ⇨ 36

Where a police report fails to provide sufficient facts from which it could be reasonably anticipated that a claim against the District of Columbia might arise, the police report does not provide adequate notice for legal action against the District. *Sperling ex rel. Estate of Oxlaj-Gonzales v. Washington Metropolitan Area Transit Authority*, 2008, 542 F.Supp.2d 76. District Of Columbia ⇨ 36

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District of Columbia police report, which identified the approximate time and place of the incident in which pedestrian was struck and killed by transit authority bus, did not, standing alone, provide adequate notice of personal representative's claim against the District; while the police report indicated that the pedestrian was knocked to the ground from the initial impact of the bus that made a left turn in violation of a posted no left turn sign, it did not make any mention of a defect in the design or maintenance of the traffic signs at the subject location, which was the basis of personal representative's negligence claim against the District. *Sperling ex rel. Estate of Oxlaj-Gonzales v. Washington Metropolitan Area Transit Authority*, 2008, 542 F.Supp.2d 76. District Of Columbia ⇨ 36

Police reports may be sufficient to satisfy the notice requirement for actions against District of Columbia because the law recognizes that written notice by a claimant should not be a prerequisite to legal action if, in fact, actual notice in the form of a police report has been received by the District. *Sperling ex rel. Estate of Oxlaj-Gonzales v. Washington Metropolitan Area Transit Authority*, 2008, 542 F.Supp.2d 76. District Of Columbia ⇨ 36

Under District of Columbia law, police report indicating that plaintiff "fell on some glass and hit his head on the ground" while on public sidewalk provided District with sufficient notice of basis for District's potential liability, and thus satisfied District's notice of claim statute, even though report gave no indication as to how plaintiff came to fall on glass or how glass came to be on sidewalk. *Plater v. District of Columbia Dept. of Transp.*, 2008, 530 F.Supp.2d 101. District Of Columbia ⇨ 36

In order for police report to satisfy District of Columbia statute requiring that District be provided with notice of claim as precondition to tort action against it, report must be sufficiently detailed so as to place District on notice of potential claim. *Plater v. District of Columbia Dept. of Transp.*, 2008, 530 F.Supp.2d 101. District Of Columbia ⇨ 36

Complaint summary report created by District of Columbia police department after Lebanese nightclub patron complained of mistreatment in incident at nightclub with off-duty police officers contained all of the requisite information with respect to a potential claim of assault and battery, as required to put District of Columbia on notice for purposes of patron's assault and battery claims. *Mazloum v. District of Columbia Metropolitan Police Dept.*, 2007, 522 F.Supp.2d 24. Federal Courts ⇨ 1042

A police report satisfies District of Columbia law requiring notice of suit to District in order to recover against District if it contains information as to the time, place, cause and circumstances of injury or damage with at least the same degree of specificity required of a written notice. *Mazloum v. District of Columbia Metropolitan Police Dept.*, 2007, 522 F.Supp.2d 24. Federal Courts ⇨ 1042

The inquiry with respect to a police report's capacity to satisfy notice requirement in order to recover in suit against District of Columbia is whether the District should have anticipated, as a consequence of receiving the police reports, that a complaint by plaintiff would be forthcoming. *Mazloun v. District of Columbia Metropolitan Police Dept.*, 2007, 522 F.Supp.2d 24. Federal Courts ⇨ 1042

Under District of Columbia law, police report regarding sexual assault of one minor at camp owned and operated by District sufficiently advised District of circumstances surrounding alleged sexual assault against another minor at camp to satisfy notice requirement under Tort Claims Act, where report contained name and age of alleged perpetrator, names of four campers, including minor, who were allegedly sexually assaulted, location of alleged assaults, date on which alleged injury against complainant occurred, description of how injury against complainant occurred, information that camp was run by District, and statement that perpetrator was "in charge." *R. v. District of Columbia*, 2005, 370 F.Supp.2d 267. District Of Columbia ⇨ 36

Under District of Columbia law, whether police report satisfies statutory notice requirement of Tort Claims Act is question of law. *R. v. District of Columbia*, 2005, 370 F.Supp.2d 267. District Of Columbia ⇨ 36

Under District of Columbia law, existence of police report does not result in compliance with Tort Claims Act's notice provision, unless report contains information as to time, place, cause, and circumstances of injury or damage with at least same degree of specificity required of written notice. *R. v. District of Columbia*, 2005, 370 F.Supp.2d 267. District Of Columbia ⇨ 36

Under District of Columbia law, police reports satisfy requirement that District receive notice of tort claims against it only if they actually notify District of injury claimed. *Feirson v. District of Columbia*, 2004, 315 F.Supp.2d 52, affirmed 506 F.3d 1063, 378 U.S.App.D.C. 310. District Of Columbia ⇨ 36

Under District of Columbia law, police officer's injury report gave District sufficiently detailed notice of cause and circumstances of injury to satisfy statutory notice requirements before bringing tort suit against District, where report was in writing and prepared in regular course of duty, contained sufficient information on time and place of injury, described factual cause of those injuries, and suggested that armament systems proficiency (ASP) training and fighting, in which officer was injured, was condition of his continued employment. *Feirson v. District of Columbia*, 2004, 315 F.Supp.2d 52, affirmed 506 F.3d 1063, 378 U.S.App.D.C. 310. District Of Columbia ⇨ 36

Police report did not satisfy requirement that hotel restaurant patron, whose husband was arrested in connection with officers' attempt to remove him from restaurant, file notice with mayor prior to bringing lawsuit seeking unliquidated

damages against District of Columbia based on incident, inasmuch as police report, which was made out against husband, did not specify that patron was present at scene or that she was involved in underlying events in any way, but rather only mentioned her as immediate relative of husband; report thus did not adequately put District of Columbia on notice of possibility of patron's claims for negligent supervision and intentional and negligent infliction of emotional distress. *Parker v. Grand Hyatt Hotel*, 2000, 124 F.Supp.2d 79. District Of Columbia ⇨ 36

A police report is sufficient as notice of claim against District of Columbia only if the report specifies all the information that is required of claimant's written notice under statute. *Parker v. Grand Hyatt Hotel*, 2000, 124 F.Supp.2d 79. District Of Columbia ⇨ 36

Police reports may suffice as notice of potential lawsuit against the District, but the report must state both the cause and the circumstances of the injury with enough particularity to inform the District of a reasonable basis for anticipating legal action. *Snowder v. District of Columbia*, 2008, 949 A.2d 590. District Of Columbia ⇨ 36

25.5. Dismissal

Failure of plaintiffs to comply with District of Columbia municipal notice statute warranted dismissal of claims under the District of Columbia Human Rights Act (DCHRA) for unliquidated damages. *Giardino v. District of Columbia*, 2008, 252 F.R.D. 18. District Of Columbia ⇨ 36

26. Complaint as notice

Internal complaint to department of corrections, as employer, and complaint to Equal Employment Opportunity Commission (EEOC) did not constitute "notice" to District of Columbia, for purpose of statute which required notice of claim within six months of violation, and, consequently, corrections officer, as employee, could not bring negligent hiring or retention and intentional infliction of emotional distress claims against District of Columbia. *Jones v. District of Columbia*, 2004, 346 F.Supp.2d 25, affirmed in part, reversed in part and remanded 429 F.3d 276, 368 U.S.App.D.C. 279, on remand 646 F.Supp.2d 42. District Of Columbia ⇨ 36

28. Federal claims

Affirmative defense, that prisoners' claims were barred for failure to comply with District of Columbia notice requirements, applied only to claims against District of Columbia, not against individual defendants, and it did not apply to constitutional or other federal claims. *Anderson-Bey v. District of Columbia*, 2006, 466 F.Supp.2d 51. District Of Columbia ⇨ 36

District of Columbia's notice-of-claim statute did not apply to action brought by plaintiff against District for allegedly selling plaintiff's car, which had been stolen and later recovered by police, without providing notice of the sale, since plaintiff pled a federal due process claim, not a common law

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negligence claim. *Candido v. District of Columbia*, 2007, 242 F.R.D. 151. District Of Columbia ⇨ 36

Failure, if any, by prisoner to have provided to District of Columbia mayor's office a written notice of claim, which arose from alleged prison assault by Department of Corrections (DOC) guards, would be no bar to federal §§ 1983 claims in the District's courts. *Artis-Bey v. District of Columbia*, 2005, 884 A.2d 626. District Of Columbia ⇨ 36

29. Waiver and estoppel

District of Columbia and executive director of its lottery waived protection of statute requiring that a plaintiff give notice of action against District of Columbia by failing to raise that statute as defense during three and one-half years that elapsed between filing of initial complaint and their motion to dismiss, in action brought by civil rights organization and disabled lottery players, alleging that they were denied access to lottery, in violation of Americans with Disabilities Act (ADA), Rehabilitation Act, and the District of Columbia Human Rights Act. *Equal Rights Center v. District of Columbia*, 2010, 741 F.Supp.2d 273. District Of Columbia ⇨ 36

District of Columbia waived right to assert affirmative defense, that prisoners' common law tort claims for assault and battery, intentional infliction of emotional distress, and negligence were barred for failure to give prior notice to District of Columbia of claims within timely manner, where municipality continued to litigate case without reiterating notice defense. *Anderson-Bey v. District of Columbia*, 2006, 466 F.Supp.2d 51. District Of Columbia ⇨ 36

33. Pleadings

District court properly determined at the pleading stage that District of Columbia police officer was required to give notice to Mayor of approximate time, place, cause, and circumstances of injury or damage within six months of his injury in order to maintain claims under the Whistleblower Act and for intentional infliction of emotional distress. *McGee v. District of Columbia*, 2010, 723 F.Supp.2d 161, affirmed 2010 WL 5140452, rehearing en banc denied. District Of Columbia ⇨ 36

Since District of Columbia did not assert in its answer plaintiffs' failure to provide requisite notice to Mayor, that defense could not be raised by motion for judgment on the pleadings or for summary judgment until District first moved to amend its answer. *Giardino v. District of Columbia*, 2007, 505 F.Supp.2d 117. Federal Civil Procedure ⇨ 1054; Federal Civil Procedure ⇨ 2554

The defense of failure to comply with the statute requiring notice of an action against the District of Columbia is an affirmative defense. *Lerner v. District of Columbia*, 2005, 362 F.Supp.2d 149, appeal dismissed 2005 WL 3789087. District Of Columbia ⇨ 36

A claim that is only implicit in statutorily required notice of claims to District of Columbia cannot be the basis for a later suit against the

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District. *Tibbs v. Williams*, 2003, 263 F.Supp.2d 39. District Of Columbia ⇨ 36

33.5. Standing

Disabled District of Columbia lottery players, who depended on motorized wheelchairs, alleged injury that was both concrete and particularized and actual or imminent, as required for players to have standing to bring claims under Americans with Disabilities Act (ADA), Rehabilitation Act, and District of Columbia Human Rights Act against District of Columbia and lottery's executive director, where complaint stated that players often waited outside their most convenient lottery locations for long periods of time and had to ask for assistance from others in order to enter those locations, and that they faced increased risks to their personal safety because they had to wait in neighborhoods populated with prostitutes and drug addicts. *Equal Rights Center v. District of Columbia*, 2010, 741 F.Supp.2d 273. Civil Rights ⇨ 1333(6); Civil Rights ⇨ 1737

Alleged injuries suffered by disabled District of Columbia lottery players, who depended on motorized wheelchairs, including not being able to access their preferred lottery locations, were redressable, as required for players to have standing to bring claims under Americans with Disabilities Act (ADA), Rehabilitation Act, and District of Columbia Human Rights Act against District of Columbia and lottery's executive director; favorable finding for players would at least have effect of forcing defendants to increase accessibility of lottery, and although program with greater accessibility might not guarantee that players could participate in lottery without impediment at every lottery location, it would reduce if not eliminate players' need to subject themselves to safety risks or to rely on others for help at so many of the locations they wished to access. *Equal Rights Center v. District of Columbia*, 2010, 741 F.Supp.2d 273. Civil Rights ⇨ 1333(6); Civil Rights ⇨ 1737

34. Questions of fact

Issue of whether claimant filed claim against District of Columbia with mayor within six months presented fact questions that could not be resolved on motion to dismiss on timeliness grounds claimant's state law claims against District officials. *Day v. D.C. Dept. of Consumer and Regulatory Affairs*, 2002, 191 F.Supp.2d 154. Federal Civil Procedure ⇨ 1831

36. Review

The Court of Appeals would review de novo, on former District of Columbia (DC) employee's appeal from summary judgment on his disability discrimination claims against DC, whether his claims were time-barred, whether statutory notice requirements prevented him from presenting claims under Human Rights Act (HRA) for liquidated damages, whether those notice requirements prevented him from suing Public Service Commission (PSC) of DC, as distinct from DC, and whether record supported DC's position that employee could not establish that he was disabled or regard-

ed as disabled. *Jaiyeola v. District of Columbia*, 2012, 40 A.3d 356. Federal Courts ⇨ 1066

Compliance with statute prohibiting suits against District of Columbia unless District is notified of injury within six months is question of law that Court of Appeals reviews de novo. *Brown v. District of Columbia*, 2004, 853 A.2d 733. Federal Courts ⇨ 1066

Compliance with terms of statute mandating that a person file notice with District of Columbia prior to filing suit against the District is a question of law that is reviewed de novo. *Hubbard v. Chidel*, 2002, 790 A.2d 558.

Questions of whether radiologist, whose employer gave timely notice to District of Columbia of claim for contribution, was required to give the

District separate notice, and whether a proper claim for contribution by radiologist and his employer against the District was before the trial court, required remand. *Hubbard v. Chidel*, 2002, 790 A.2d 558. Federal Courts ⇨ 1067

Compliance with statute prohibiting suits against District of Columbia unless District is notified within six months of the damage or injury is question of law that Court of Appeals reviews de novo. *George v. Dade*, 2001, 769 A.2d 760. Federal Courts ⇨ 1066

Compliance with notice statute governing claims against the District of Columbia is a question of law that the Court of Appeals reviews de novo. *District of Columbia v. Arnold & Porter*, 2000, 756 A.2d 427. Federal Courts ⇨ 1066

§ 12-310. Actions arising out of death or injury caused by defective or unsafe improvements to real property.

Notes of Decisions

2. In general

Ten-year statute of repose governing action arising out of death or injury caused by defective or unsafe improvements to real property did not apply to property owner's claim against renovation contractor for latent defects in property renovation. *Mazza v. Housecraft LLC*, 2011, 18 A.3d 786, vacated 22 A.3d 820. Limitation of Actions ⇨ 18

5. Persons protected

Claims of rail passengers and estates of deceased rail passengers against provider of components used in electronic train control system in Washington Metropolitan Area Transit Authority

(WMATA) were precluded under District of Columbia's 10-year statute of repose barring personal injury or wrongful death claims arising from defective design, inasmuch as claims were brought against provider in its capacity as designer of system; fact that provider was both designer and manufacturer of system did not preclude protection for provider's design activities under statute of repose. In re Fort Totten Metrorail Cases Arising Out of the Events of June 22, 2009, 2011, 793 F.Supp.2d 133. Death ⇨ 39; Limitation of Actions ⇨ 55(4); Products Liability ⇨ 261; Products Liability ⇨ 305

§ 12-311. Actions arising out of death or injury caused by exposure to asbestos.

(a) In any civil action for injury or illness based upon exposure to asbestos, the time for the commencement of the action shall be the later of the following:

- (1) Within one year after the date the plaintiff first suffered disability;
- (2) Within one year after the date the plaintiff either knew, or through the exercise of reasonable diligence should have known, that the disability was caused or contributed to by the exposure; or
- (3) Three years from the time the right to maintain the action accrues.

(b) "Disability" as used in subsection (a) of this section means the loss of time from work as a result of the exposure that precludes the performance of the employee's regular occupation.

(c) In an action for the wrongful death of any plaintiff's decedent, based upon exposure to asbestos, the time for commencement of an action shall be the later of the following:

- (1) Within one year from the date of the death of the plaintiff's decedent; or
- (2) Within one year from the date the plaintiff first knew, or through the exercise of reasonable diligence should have known, that the death was caused or contributed to by the exposure.

(Feb. 28, 1987, D.C. Law 6-202, § 5, 34 DCR 527; June 3, 2011, D.C. Law 18-377, § 3, 58 DCR 1174.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 18-377, in subsec. (a), deleted “or” from the end of par. (1), substituted “; or” for a period the end of par. (2), and added par. (3).

Temporary Amendments of Section

Section 2 of D.C. Law 18-297 added subsec. (d) to read as follows:

“(d) A plaintiff in an asbestos-injury action shall have the longer of the limitation period prescribed by subsection (a) of this section or the limitation period prescribed by § 12-301(8).”.

Section 4(b) of D.C. Law 18-297 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2 of Asbestos Statute of Limitations Clarification Emergency Act of 2010 (D.C. Act 18-585, October 20, 2010, 57 DCR 10134).

For temporary (90 day) amendment of section, see § 503 of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 503 of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

Legislative History of Laws

Law 18-377, the “Criminal Code Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-963, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 2, 2011, it was assigned Act No. 18-722 and transmitted to both Houses of Congress for its review. D.C. Law 18-377 became effective on June 3, 2011.

TITLE 13

PROCEDURE GENERALLY.

Chapter	Section
1. Rules of Procedure.....	13-101
3. Process and Parties.....	13-302.01
4. Civil Jurisdiction and Service Outside the District of Columbia.	13-421
4A. Interstate Depositions and Discovery; Uniform Act.	13-441

Chapter 1

Rules of Procedure.

§ 13-101. Prescription of rules by courts. [Repealed]

Historical and Statutory Notes

Miscellaneous Notes

Section 25(a) of D.C. Law 15-354 provides that Title 13 is designated Title 13 of the District of Columbia Official Code.

Chapter 3

Process and Parties.

Section	Subchapter I. General Provisions.	Section
13-302.01. Service by Metropolitan Police Department.		13-340. Manner of publication; mailing of copy; default; appointment and compensation of guardian and attorney.
	Subchapter II. Service of Process; Legal Representatives.	
13-334.	Service on foreign corporations.	

SUBCHAPTER I. GENERAL PROVISIONS.

§ 13-302.01. Service by Metropolitan Police Department.

Historical and Statutory Notes

Miscellaneous Notes

Section 25(b) of D.C. Law 15-354 provides that the section designation of § 13-302.1 of the Dis-

trict of Columbia Official Code is redesignated as § 13-302.01.

SUBCHAPTER II. SERVICE OF PROCESS; LEGAL REPRESENTATIVES.

§ 13-334. Service on foreign corporations.

Notes of Decisions

Jurisdiction 8.5

Service of process 8.7

Subsidiaries, doing business in District 3.5

1. In general

Jurisdiction under the District of Columbia statute that governs service on foreign corporations requires that such systematic contacts demonstrate a continuing corporate presence in the forum directed at advancing the corporation's objectives. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1037

Federal district court did not have general personal jurisdiction, under District of Columbia long-arm statute, over mining joint venture based in Peru, in suit claiming interference with catering operations involving Peruvian mine workers, when contacts consisted of trips to District by employees, to discuss details of funding with bank located in District. *AGS Intern. Services S.A. v. Newmont USA Ltd.*, 2004, 346 F.Supp.2d 64. Federal Courts ⇨ 84

Federal district court sitting in District of Columbia did not have general personal jurisdiction, under District's long-arm statute, over mining corporation headquartered in Colorado, in suit claiming interference with catering operations involving Peruvian mine workers; only contact with District was maintenance of one-person, two-room office, engaged in federal government liaison rather than sales activities. *AGS Intern. Services S.A. v. Newmont USA Ltd.*, 2004, 346 F.Supp.2d 64. Federal Courts ⇨ 84

Mauritian company was not subject to personal jurisdiction in District of Columbia in action seeking damages arising out of relocation of Chagos natives to Mauritius, even though company was affiliated with international accounting firm, company was represented in District by American company, and company was party to contract to recruit civilian employees for United States naval base in Chagos islands; claims did not arise out of company's actions in District, company's affiliation was with Swiss branch of accounting firm, agreement with American representative focused on consulting services for procurement of World Bank projects in Africa, recruitment contract was performed exclusively in Mauritius and was regulated by Mauritian law, and company did no advertising in United States, had no United States contacts, and supplied no services in United States. *Bancoult v. McNamara*, 2003, 214 F.R.D. 5. Federal Courts ⇨ 86

2. Due process

Employees' factual allegations to support claims that employer, as president and principal owner of

Maryland cleaning and janitorial services corporation, violated FLSA wage standards for seven employees, who provided cleaning services primarily in District of Columbia, established that employer through his corporation had continuous and systematic business activity in District of Columbia sufficient to comport with due process requirements for exercising general jurisdiction over employer, under District of Columbia law, not only for claims by District of Columbia employees but also for remaining claims by five employees primarily performing cleaning services in Virginia, since employer was more than mere employee of corporation, but rather, was sole owner and corporate officer who controlled management and policies of corporation as to employees' wages. *Azamar v. Stern*, 2009, 662 F.Supp.2d 166. Constitutional Law ⇨ 3965(10); Federal Courts ⇨ 1041

The reach of general jurisdiction under the District of Columbia statute that governs service on foreign corporations is coextensive with the reach of constitutional due process. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1037

Maintenance of website from which District of Columbia residents could download copyrighted music could constitute continuous and systematic contacts with District, in fulfillment of requirements of both constitutional due process and "doing business" provision of District's long-arm statute, for purpose of determining whether federal court had personal jurisdiction over nonresident website operator in infringement action brought by record companies; operator had purposefully directed its actions at District and could reasonably anticipate being haled into court there as consequence. *Arista Records, Inc. v. Sakfield Holding Co. S.L.*, 2004, 314 F.Supp.2d 27, 71 U.S.P.Q.2d 1035. Constitutional Law ⇨ 3965(8); Federal Courts ⇨ 1037

Reach of doing business jurisdiction under District of Columbia statute is coextensive with reach of constitutional due process. *Diamond Chemical Co., Inc. v. Atofina Chemicals, Inc.*, 2003, 268 F.Supp.2d 1. Federal Courts ⇨ 1051

In order to exercise general personal jurisdiction over a foreign corporation, the defendant corporation must purposely avail itself of the privilege of conducting activities within the forum state, and its continuing contacts with the District of Columbia must provide it with clear notice that it is subject to suit here. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Courts ⇨ 13.4(3)

3. Doing business in District—In general

District of Columbia law permits courts to exercise general jurisdiction over a foreign corporation as to claims not arising from the corporation's

conduct in the District, if the corporation is doing business in the District. *Gorman v. Ameritrade Holding Corp.*, C.A.D.C.2002, 293 F.3d 506, 352 U.S.App.D.C. 229. Federal Courts ⇨ 1051

Where the basis for obtaining jurisdiction over a foreign corporation is the District of Columbia statute authorizing general jurisdiction based on a corporation doing business in the District, a plaintiff who serves a foreign corporation by mail outside the District is foreclosed from benefitting from the jurisdictional protection of the statute. *Gorman v. Ameritrade Holding Corp.*, C.A.D.C. 2002, 293 F.3d 506, 352 U.S.App.D.C. 229. Federal Courts ⇨ 1051

Virginia real estate broker's mailing of copy of summons and complaint to securities broker's corporate headquarters in Nebraska did not establish jurisdiction of District of Columbia courts under District statute authorizing general jurisdiction based on corporation doing business in District, notwithstanding District of Columbia Superior Court rule that appeared to permit service upon corporations by mail. *Gorman v. Ameritrade Holding Corp.*, C.A.D.C.2002, 293 F.3d 506, 352 U.S.App.D.C. 229. Federal Courts ⇨ 1051

German restaurant corporation was not "doing business" within District of Columbia forum, for purposes of court's general personal jurisdiction over corporation under District of Columbia long-arm statute; although corporation maintained licensor-licensee relationship with American entity, corporation never had any assets or operations in District or anywhere else in United States, nor did it have ownership interest in any business entity formed in District of Columbia or anywhere else in United States. *Rundquist v. Vapiano SE*, 2011, 798 F.Supp.2d 102. Federal Courts ⇨ 1037

In personal injury action in federal court in District of Columbia against automobile manufacturer for damages resulting from automobile accident in South Africa, manufacturer, a Japanese corporation whose principal place of business was in Japan, did not do business in District as would subject manufacturer to personal jurisdiction under District's provision for service of foreign corporations, where manufacturer was not licensed to do business in District, manufacturer did not own or lease real estate and did not maintain sales force or any other agents or representatives in District, manufacturer did not pay taxes to District, none of manufacturer's designing or manufacturing took place in District, manufacturer did not target marketing at District residents, and manufacturer did not ship any vehicles for purposes of sale directly into District. *Miller v. Toyota Motor Corp.*, 2009, 620 F.Supp.2d 109. Federal Courts ⇨ 1037

Under District of Columbia law, courts may exercise general jurisdiction over a foreign corporation as to claims not arising from the corporation's conduct in the District if the corporation is doing business in the District; the reach of doing business jurisdiction is co-extensive with the reach of constitutional due process, which makes general jurisdiction permissible if the defendant's business contacts with the forum are continuous and sys-

tematic. *Miller v. Toyota Motor Corp.*, 2009, 620 F.Supp.2d 109. Federal Courts ⇨ 1037

Foreign corporation's interactive website, along with single, short-lived, and since-terminated relationship with customer in District of Columbia, did not constitute doing business in District of Columbia, and thus Court could not exercise general personal jurisdiction over it under District of Columbia statute that governed service on foreign corporations; although website provided demonstration of services provided by corporation, website itself did not provide service in that it was merely informational. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1037

District court lacked general personal jurisdiction over energy company sued by municipalities alleging illegal agreement to artificially inflate price of natural gas, pursuant to District of Columbia law; municipalities failed to provide any information showing what, if any, business company conducted in its office in District of Columbia. *City of Moundridge, KS v. Exxon Mobil Corp.*, 2007, 471 F.Supp.2d 20, motion to amend denied 244 F.R.D. 10, reconsideration denied 250 F.R.D. 1. Federal Courts ⇨ 1037

Anthrax vaccine manufacturer's contacts with the District of Columbia were not sufficiently continuous and systematic to satisfy the due process requirements of general jurisdiction, and thus, federal court located in District of Columbia did not have general jurisdiction over Michigan manufacturer in products liability action brought against manufacturer by consumer, who alleged that he suffered serious ailments from anthrax inoculations he received while in military; manufacturer did not maintain office, mailing address, telephone, or agent for service of process in District, and manufacturer had never marketed or sold vaccine for distribution or use by the general public and had never sold vaccine to resident of the District. *Savage v. Bioport, Inc.*, 2006, 460 F.Supp.2d 55. Constitutional Law ⇨ 3965(4); Federal Courts ⇨ 1041

Website that allowed 25 free music downloads before charging customers for additional downloads could be found to be "conducting business" in District of Columbia, for purpose of determining whether federal court had personal jurisdiction over nonresident website operator in infringement action brought by record companies, regardless of whether any District residents had in fact paid for downloads; website's marketing technique constituted active solicitation. *Arista Records, Inc. v. Sakfield Holding Co. S.L.*, 2004, 314 F.Supp.2d 27, 71 U.S.P.Q.2d 1035. Federal Courts ⇨ 1037

Reach of "doing business" jurisdiction under District of Columbia long-arm statute is coextensive with reach of constitutional due process. *Arista Records, Inc. v. Sakfield Holding Co. S.L.*, 2004, 314 F.Supp.2d 27, 71 U.S.P.Q.2d 1035. Federal Courts ⇨ 1037

Federal district court sitting in District of Columbia did not have general jurisdiction over non-resident natural gas pipeline operator sued for antitrust violations, under District law, based on maintenance of Internet website used sporadically by three District-based companies to schedule movements of natural gas; usage of website was insufficient to constitute "continuous and systematic general business contacts" required for jurisdiction. *Atlantigas Corp. v. Nisource, Inc.*, 2003, 290 F.Supp.2d 34, appeal dismissed 2003 WL 22971974. Antitrust And Trade Regulation ⇨ 969

Under laws of District of Columbia, courts may exercise general jurisdiction over foreign corporation as to claims not arising from corporation's conduct in District, if corporation is doing business in District. *Diamond Chemical Co., Inc. v. Atofina Chemicals, Inc.*, 2003, 268 F.Supp.2d 1. Federal Courts ⇨ 1051

Physician's vague and unsupported statements, that New York hospital where she trained defendant conducted business and/or performed services in its regular course of business and maintained close communications with Secretary of Health and Human Services and readily supplied and requested information from North Dakota and West Virginia medical boards, were insufficient to satisfy constitutional requirements of due process for exercising jurisdiction under District of Columbia's general statute authorizing jurisdiction over foreign corporations; there was no evidence that hospital engaged in any activity at all in District of Columbia, solicited business within District of Columbia, or had any contacts within District of Columbia. *Baltierra v. West Va Bd. of Medicine*, 2003, 253 F.Supp.2d 9. Constitutional Law ⇨ 3965(5); Federal Courts ⇨ 1037

West Virginia Board of Medicine's motion to dismiss physician's original complaint for lack of personal jurisdiction, insufficiency of service of process, and failure to state a claim on which relief could be granted, or alternatively, to dismiss for improper venue or to transfer the case to the United States District Court for the Southern District of West Virginia became moot when physician filed her first amended complaint. *Baltierra v. West Va Bd. of Medicine*, 2003, 253 F.Supp.2d 9. Federal Courts ⇨ 13

The proper inquiry in determining if a court can exercise general personal jurisdiction over a foreign defendant is whether there is any continuing corporate presence in the forum state directed at advancing the corporation's objectives; if this test is met, the trial court may exercise jurisdiction, provided that such an exercise comports with due process. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Courts ⇨ 13.4(3)

3.5. Subsidiaries, doing business in District

In personal injury action in District of Columbia federal district court against automobile manufacturer for damages resulting from automobile accident in South Africa, manufacturer, a Japanese corporation whose principal place of business was in Japan, was not subject to personal jurisdiction

by virtue of its subsidiaries' activities under District's provision for service of foreign corporations; subsidiaries contacts with District were irrelevant because subsidiaries were not alter egos of manufacture as would warrant imputing their contacts to manufacturer. *Miller v. Toyota Motor Corp.*, 2009, 620 F.Supp.2d 109. Federal Courts ⇨ 1037

4. — Distinguished from transacting business, doing business in district

Anthrax vaccine manufacturer's limited contacts with the District of Columbia fell short of satisfying the "doing business" requirement of District's long-arm statute, and thus, federal court located in District of Columbia did not have general jurisdiction over Michigan manufacturer in products liability action brought against manufacturer by consumer, who alleged that he suffered serious ailments from the anthrax inoculations he received while in the military; manufacturer's contacts were only sufficient for transacting business, and thus, it was only subject to specific jurisdiction arising out of its contacts in the forum. *Savage v. Bioport, Inc.*, 2006, 460 F.Supp.2d 55. Federal Courts ⇨ 1041

Difference between jurisdiction under Clayton Act section providing for proper forum in which to bring antitrust action against corporation and District of Columbia (D.C.) long-arm statute is that while both look at contacts with district, under Clayton Act provision transactions do not have to be related to cause of action or subject matter of suit, while under D.C. long-arm statute there must be connection between jurisdictional contacts and cause of action. *Diamond Chemical Co., Inc. v. Atofina Chemicals, Inc.*, 2003, 268 F.Supp.2d 1. Antitrust And Trade Regulation ⇨ 969; Federal Courts ⇨ 1051

The proper inquiry in determining if a court can exercise general personal jurisdiction over a foreign defendant is whether there is any continuing corporate presence in the forum state directed at advancing the corporation's objectives; if this test is met, the trial court may exercise jurisdiction, provided that such an exercise comports with due process. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Courts ⇨ 13.4(3)

5. Transacting business in District

Netherlands law firm's participation in United States and international legal organizations, visits to clients in the United States, and attendance at legal education seminars in the United States would not establish specific personal jurisdiction over firm in corporation's legal malpractice action in District of Columbia federal district court as would permit jurisdictional discovery regarding firm's contacts; discovery would merely show firm's contacts with the United States generally, and corporation's claim did not rise out of any of firm's contacts for which discovery was sought. *Exponential Biotherapies, Inc. v. Houthoff Buruma N.V.*, 2009, 638 F.Supp.2d 1. Federal Courts ⇨ 1037

6. Subsidiaries

District of Columbia law permits courts to exercise general jurisdiction over a foreign corporation as to claims not arising from the corporation's conduct in the District, if the corporation is doing business in the District. *Gorman v. Ameritrade Holding Corp.*, C.A.D.C.2002, 293 F.3d 506, 352 U.S.App.D.C. 229. Federal Courts ⇨ 1051

Under District of Columbia law, Delaware corporation and limited liability company (LLC) were not doing business in District at time complaint was filed against them, and thus their Swiss parent company was not subject to personal jurisdiction in District under alter ego theory based on their contacts with District, where corporation and LLC had been dissolved before action was commenced and did not maintain addresses in District, and there was no evidence that their activities in District advanced parent's business objectives. *Roz Trading Ltd v. Zeromax Group, Inc.*, 2007, 517 F.Supp.2d 377. Federal Courts ⇨ 1037

Under District of Columbia law, defendant corporation's contacts with forum may not be attributed to affiliated corporations, except where affiliated parties are alter egos of corporation over which court has personal jurisdiction, in which case corporation's contacts may be attributed to affiliated party for jurisdictional purposes. *Roz Trading Ltd v. Zeromax Group, Inc.*, 2007, 517 F.Supp.2d 377. Federal Courts ⇨ 1037

Ordinarily, defendant corporation's contacts with forum may not be attributed to affiliated corporations under general District of Columbia "doing business" statute; exception exists, however, where affiliated parties are alter egos of corporation over which court has personal jurisdiction, and in that case corporation's contacts may be attributed to affiliated party for jurisdictional purposes. *Diamond Chemical Co., Inc. v. Atofina Chemicals, Inc.*, 2003, 268 F.Supp.2d 1. Federal Courts ⇨ 1051

In antitrust conspiracy case, district court lacked general personal jurisdiction over French corporation based on asserted contacts of its "alter ego" subsidiaries with District of Columbia, absent demonstration that any subsidiary with continuous and systematic contacts with District of Columbia was not separate entity but in fact French corporation acting under different guise; shared executives and joint promotion after merger were not sufficient. *Diamond Chemical Co., Inc. v. Atofina Chemicals, Inc.*, 2003, 268 F.Supp.2d 1. Federal Courts ⇨ 1037

8. Practice and procedure, generally

Real estate broker demonstrated that it could, through discovery, supplement its allegations that District of Columbia courts had jurisdiction over its action alleging that securities broker failed to honor contract to provide front-page link to real estate broker's Internet website, and real estate broker thus would have been entitled to discovery, absent insufficient service of process, where securities broker's customers entered into binding contracts over Internet, securities broker offered cus-

tomers alternative of conducting transactions by mail or telephone, and securities broker permitted transactions 24 hours a day. *Gorman v. Ameritrade Holding Corp.*, C.A.D.C.2002, 293 F.3d 506, 352 U.S.App.D.C. 229. Federal Civil Procedure ⇨ 1275.5

Plaintiff failed to personally serve Mexican corporation in the District, but rather served the corporation in Mexico, and thus, the trial court lacked general personal jurisdiction over the corporation under statute that allowed jurisdiction over foreign companies that did business in the District. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Corporations And Business Organizations ⇨ 3265

8.5. Jurisdiction

District of Columbia could not exercise general jurisdiction over Bahamian bank and its Swiss parent, even if the banks had correspondent accounts in New York and maintained an agent for service of process; existence of bank accounts in New York did not establish the banks' presence in the District of Columbia, and agent, who was also in New York, by statute, was designated to receive service from either the Secretary of the Treasury or the Attorney General of the United States. *Day v. Cornèr Bank (Overseas) Ltd.*, 2011, 789 F.Supp.2d 150. Federal Courts ⇨ 1037

District of Columbia could not exercise general jurisdiction over Bahamian law firm, even if the law firm had clients based in the District of Columbia, where law firm had never been authorized to do business in the District of Columbia, none of the firm's attorneys were admitted to the District of Columbia bar, the law firm did not recruit employees or solicit customers in the District of Columbia, and the only work done by the law firm for clients based in the District of Columbia was related to legal issues in the Bahamas. *Day v. Cornèr Bank (Overseas) Ltd.*, 2011, 789 F.Supp.2d 150. Federal Courts ⇨ 1037

District court for the District of Columbia (D.C.) could not exercise general personal jurisdiction over non-resident United States producers of ferrosilicon and their parent companies in Brazilian ferrosilicon producers' suit alleging that the United States producers and their parent companies defrauded the International Trade Commission (ITC) and caused the Department of Commerce to impose antidumping duties that harmed the Brazilian producers; United States producers and their parent companies were not incorporated in D.C., they did not have agents in D.C., they were not licensed in D.C., and D.C. was not their principal place of business. *Companhia Brasileira Carbureto de Calcio-CBCC v. Applied Industrial Materials Corp.*, 2010, 698 F.Supp.2d 109, question certified 640 F.3d 369, 395 U.S.App.D.C. 106, certified question answered 35 A.3d 1127, answer to certified question conformed to 2012 WL 555650. Federal Courts ⇨ 1037

Financial services companies and officers sued by competitor seeking declaration that it owned all rights in financial management software lacked

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Note 8.5

sufficient continuous and systematic contacts with forum for district court to assert general personal jurisdiction, pursuant to District of Columbia law; officer made only three trips to forum on behalf of company, none of which resulted in any business transactions. *The Urban Institute v. FINCON Services*, 2010, 681 F.Supp.2d 41. Federal Courts ⇨ 1037

Jurisdictional reach of federal district court in District of Columbia was determined by District of Columbia's long-arm statute, subject to further demonstration that court's exercise of jurisdiction would be consistent with constitutional due process requirements. *Crichlow v. Warner Music Group Corp.*, 2008, 565 F.Supp.2d 1. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1041

8.7. Service of process

District Court for the District of Columbia lacked personal jurisdiction over non-resident for-profit corporation that assisted medical students in obtaining medical residency positions, pursuant to provision of District of Columbia's long-arm stat-

ute allowing general personal jurisdiction over foreign corporations, in action brought by non-profit corporation that conducted annual program to match students with residency program, alleging conspiracy to defraud, civil conspiracy, tortious interference and trade secret misappropriation; the non-profit failed to serve the for-profit in the District of Columbia. *National Resident Matching Program v. Electronic Residency LLC*, 2010, 720 F.Supp.2d 92. Federal Courts ⇨ 1037

It was appropriate to remove employee's actions against her former employer, alleging employer wrongfully produced her employment records in response to subpoena served on it in prior litigation involving employee and another former employer, notwithstanding employee's claim that action was removed before former employer was properly served in District of Columbia Superior Court, since formal service was not required before removing a case. *Middlebrooks v. Godwin Corp.*, 2011, 279 F.R.D. 8. Removal of Cases ⇨ 79(1)

§ 13-340. Manner of publication; mailing of copy; default; appointment and compensation of guardian and attorney.

Notes of Decisions

In general ½

½. In general

Defendants' explanation that they inadvertently forgot to file answer did not constitute "good cause" for vacating the entry of default, especially in light of the fact that defendants did not file an answer during the three-week period after they became aware of their failure to file an answer. *Restaurant Equipment and Supply Depot, Inc. v. Gutierrez*, 2004, 852 A.2d 951. Federal Courts ⇨ 1054

A default is not a judgment, though it precludes the defaulted party from contesting liability; thus, a default is an interlocutory order that is not appealable to the Court of Appeals, and the appellant instead must appeal from the final judgment of default. *Digital Broadcast Corp. v. Rosenman & Colin, LLP*, 2004, 847 A.2d 384. Federal Courts ⇨ 1052.1; Federal Courts ⇨ 1062

Whereas a default is disfavored under the civil rule allowing a range of sanctions for failure to appear at a pretrial conference, default is pre-

sumed under the civil rule regarding failure to plead or otherwise defend. *Digital Broadcast Corp. v. Rosenman & Colin, LLP*, 2004, 847 A.2d 384. Federal Courts ⇨ 1052.1

Defendant's motions for enlargements of time to respond to plaintiff's complaint, while it sought admission of counsel pro hac vice, could not substitute for its failure to plead or otherwise defend the action, and thus, entry of default was warranted. *Digital Broadcast Corp. v. Rosenman & Colin, LLP*, 2004, 847 A.2d 384. Federal Courts ⇨ 1052.1

Defendant did not establish good cause for setting aside an entry of default which had been based on failure to defend, though defendant, during six-week enlargement of time to respond to the complaint, had been unable to hire local counsel, as would be required for pro hac vice admission of its non-local counsel, where defendant did not search diligently for non-local counsel during the enlargement period. *Digital Broadcast Corp. v. Rosenman & Colin, LLP*, 2004, 847 A.2d 384. Federal Courts ⇨ 1052.1

Chapter 4

Civil Jurisdiction and Service Outside the District of Columbia.

Subchapter II. Bases of Personal Jurisdiction Over Persons Outside the District of Columbia.

Section

13-421. Definition of person.

13-422. Personal jurisdiction based upon enduring relationship.

Section

13-423. Personal jurisdiction based upon conduct.
13-425. Inconvenient forum.

Subchapter III. Service Outside the District of Columbia.

13-431. Manner and proof of service.

Section

13-434. Assistance to tribunals and litigants outside the District of Columbia.

SUBCHAPTER II. BASES OF PERSONAL JURISDICTION OVER PERSONS OUTSIDE THE DISTRICT OF COLUMBIA.

§ 13-421. Definition of person.

Notes of Decisions

Cities 3

Black v. City of Newark, 2008, 535 F.Supp.2d 163.
Federal Courts ⇨ 1037

3. Cities

City of Newark, New Jersey was not a "person" subject to District of Columbia's long-arm statute.

§ 13-422. Personal jurisdiction based upon enduring relationship.

Notes of Decisions

Discovery 7

Factors 6

Fiduciary shield 3.7

Non-residents 3.3

Personal jurisdiction 4.5

Presumptions and burden of proof 5

1. In general

Plaintiff's assertion that venue in District of Columbia was proper because he was denied access to courts in Seventh Circuit was insufficient to establish personal jurisdiction over nonresident defendants in action concerning dispute over property located in Wisconsin, absent assertion that any defendant lived in or had principal place of business in District, existence of adequate basis to assert specific personal jurisdiction under District's long-arm statute, or allegation that any defendant had contacts with District, plaintiff's alleged harm arose from defendants' conduct in transacting business or supplying services in District, or occurrence of tortious injury in District. Kurtz v. U.S., 2011, 779 F.Supp.2d 50, reconsideration denied 2011 WL 2457923, affirmed 2012 WL 1155801. Federal Courts ⇨ 1041

Exercise of personal jurisdiction over federal prison warden, who was non-resident, in her individual capacity under District of Columbia's long-arm statute, in prisoner's action under §§ 1983 and Administrative Procedure Act, was not appropriate; warden did not transact any business or contracts to supply services in District, warden did not cause any tortious injury in District, prisoner, who was incarcerated in another state, suffered no injury in District, and warden could not have reasonably anticipated being haled into court in District. Ballard v. Holinka, 2009, 601 F.Supp.2d 110. Federal Courts ⇨ 1037

Federal district court in District of Columbia did not have personal jurisdiction under District of

Columbia long-arm statute over Director of Virginia Department of Corrections (VDOC), Warden of state prison, and individuals or entities employed by VDOC, in §§ 1983 lawsuit brought by prisoner of District of Columbia who was subject to prisoner custody arrangement with Virginia and who alleged that he was subject to variety of constitutional deprivations, since Virginia defendants did not live in District of Columbia, they did not transact business in District, and all acts alleged by prisoner to connect defendants to forum related to actions taken in their official capacities. Ibrahim v. District of Columbia, 2004, 357 F.Supp.2d 187, opinion after remand from court of appeals 498 F.Supp.2d 149. Federal Courts ⇨ 1037

District of Columbia federal court was not available forum for habeas corpus petition of Naval Reserve officer who sought to restrain his deployment to Afghanistan; District of Columbia was not officer's domicile, had no proper custodian within its reach against whom district court's writ could run, and it generated no deployment orders to officer. Blackmon v. England, 2004, 323 F.Supp.2d 1. Habeas Corpus ⇨ 638

General personal jurisdiction did not exist over Swedish national telephone company in federal district court sitting in District of Columbia, in consultancy firm's action for damages, return of property, and cease and desist order arising from Swedish corporation's alleged takeover of consultancy firm's Swedish operations, when telephone company was not domiciled in, organized under laws of, or maintaining principal place of business in District of Columbia, telephone company did not have continuing corporate presence in District of Columbia directed at advancing its corporate directives, and had no real property there, did not contract to insure or to supply services there, did not have marital or parent-and-child relationship there, and caused no injury there by either local or foreign act or omission. BPA Intern., Inc. v.

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Note 1

Kingdom of Sweden, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 86

In personam jurisdiction generally is determined as of the commencement of an action. In re Orshansky, 2002, 804 A.2d 1077, on subsequent appeal 952 A.2d 199. Courts ⇨ 39

2. Domiciliary of District

Probate court in District of Columbia had requisite personal jurisdiction over patient to appoint guardian or conservator for her, even after patient's niece, who had a health care proxy, moved patient to New York; patient was unquestionably a domiciliary of District at time she was hospitalized and petition was filed and served on her, and there was no evidence that patient intended to forsake District and resettle in New York. In re Orshansky, 2002, 804 A.2d 1077, on subsequent appeal 952 A.2d 199. Federal Courts ⇨ 1051

3. Corporations

Under District of Columbia law, federal district court had general personal jurisdiction over former members of church corporation, for purposes of corporation's trademark infringement action; members held themselves out as controlling officers of an organization incorporated in D.C., court had general personal jurisdiction over organization, and church alleged that former members, rather than organization misrepresented and misappropriated church's name under guise of corporation. Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell, 2008, 578 F.Supp.2d 164. Federal Courts ⇨ 1037

Mauritian company was not subject to personal jurisdiction in District of Columbia in action seeking damages arising out of relocation of Chagos natives to Mauritius, even though company was affiliated with international accounting firm, company was represented in District by American company, and company was party to contract to recruit civilian employees for United States naval base in Chagos islands; claims did not arise out of company's actions in District, company's affiliation was with Swiss branch of accounting firm, agreement with American representative focused on consulting services for procurement of World Bank projects in Africa, recruitment contract was performed exclusively in Mauritius and was regulated by Mauritian law, and company did no advertising in United States, had no United States contacts, and supplied no services in United States. Bancoult v. McNamara, 2003, 214 F.R.D. 5. Federal Courts ⇨ 86

3.3. Non-residents

Exercise of personal jurisdiction over nonresident employer, under District of Columbia's long-arm statute, would not comport with principles of due process in Title VII action alleging employer prevented discharged employee from securing subsequent employment by providing him "bad references," even if employer had contracts with federal government, absent showing that employer had invoked benefits and protections of District's laws by transacting business or supplying services with

PROCEDURE GENERALLY

in District, or any showing that employee had suffered injury within District. Lance v. Wilson, 2011, 811 F.Supp.2d 106. Constitutional Law ⇨ 3965(1); Federal Courts ⇨ 1037

Mere fact that federal prison warden, who was non-resident, was employee of Bureau of Prisons (BOP), which was headquartered in District of Columbia, did not render her subject to suit in her individual capacity in District, in prisoner's action under §§ 1983 alleging violations of his First Amendment rights, and under Administrative Procedure Act. Ballard v. Holinka, 2009, 601 F.Supp.2d 110. Federal Courts ⇨ 1037

Under District of Columbia law, the court may exercise specific personal jurisdiction over a non-resident if jurisdiction is applicable under the District of Columbia's long-arm statute. Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell, 2008, 578 F.Supp.2d 164. Federal Courts ⇨ 1037

3.7. Fiduciary shield

Under District of Columbia law, the corporation ordinarily insulates the individual employee from the court's personal jurisdiction; this doctrine is termed the fiduciary shield. Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell, 2008, 578 F.Supp.2d 164. Federal Courts ⇨ 1037

4.5. Personal jurisdiction

In employee's action claiming sexual harassment in violation of Title VII and violation of Equal Protection Clause by coworker and owner of Florida job corps center (JCC), providing education and career technical training program administered by United States Department of Labor, employee's single allegation that owner and coworker engaged in contractual business with federal government was not sufficient for district court to examine whether alleged contractual contacts with District of Columbia (D.C.) were systematic or continuous, as necessary to satisfy due process requirements for exercise of general personal jurisdiction over coworker and owner, under D.C.'s statute authorizing exercise of personal jurisdiction over person domiciled in, organized under laws of, or maintaining principal place of business in D.C. as to any claim for relief. Bond v. ATSI/Jacksonville Job Corps Center, 2011, 811 F.Supp.2d 417. Constitutional Law ⇨ 3965(9); Federal Courts ⇨ 1037

If a plaintiff does not plead that a District of Columbia court has personal jurisdiction over a defendant based on his domicile or place of business, that court engages in a two-part inquiry to determine if it has personal jurisdiction over the defendants: (1) the court must determine whether there is a basis for personal jurisdiction under District of Columbia's long-arm statute, and (2) the court must determine whether the exercise of personal jurisdiction would comport with the requirements of due process. Gomez v. Aragon, 2010, 705 F.Supp.2d 21. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1041

Non-resident mortgage company executive did not have continuous and systematic contacts with

District of Columbia, as required for federal district court to have general jurisdiction over executive in his personal capacity in action alleging company violated Fair Housing Act; executive lived and worked in Kansas, did not maintain an office in the District of Columbia, and did not own any real property in the District of Columbia. *NovaStar Financial, Inc.*, 2009, 631 F.Supp.2d 1. Federal Courts ⇨ 1037

General personal jurisdiction under District of Columbia law did not apply to German company with headquarters located in that country. In re *Papst Licensing GMBH & Co. KG Litigation*, 2008, 590 F.Supp.2d 94. Federal Courts ⇨ 1041

5. Presumptions and burden of proof

Under District of Columbia law, plaintiffs bear the burden of establishing a factual basis for the exercise of personal jurisdiction over the defendant; in determining whether such a basis exists, factual discrepancies appearing in the record must be resolved in favor of the plaintiffs. *Burman v. Phoenix Worldwide Industries, Inc.*, 2006, 437 F.Supp.2d 142. Federal Courts ⇨ 1041

6. Factors

Persistent conduct undertaken in a person's individual capacity may constitute "transacting business," for purposes of determining whether district court has personal jurisdiction over that person under District of Columbia's long-arm statute. *Ballard v. Holinka*, 2009, 601 F.Supp.2d 110. Federal Courts ⇨ 1037

Portion of personal jurisdiction analysis requiring district court to determine whether jurisdiction satisfies due process requirements turns on whether a defendant's "minimum contacts" with District of Columbia establish that maintenance of suit does not offend traditional notions of fair play and substantial justice. *Ballard v. Holinka*, 2009, 601 F.Supp.2d 110. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1037

In determining whether it could exercise personal jurisdiction over federal prison warden, a non-resident defendant, in prisoner's action under §§ 1983 and Administrative Procedure Act, district

court would engage in two-part inquiry; first, it was required to determine whether jurisdiction could be exercised under District of Columbia's long-arm statute, and, second, it was required to determine whether exercise of personal jurisdiction satisfied due process requirements. *Ballard v. Holinka*, 2009, 601 F.Supp.2d 110. Constitutional Law ⇨ 3965(11); Federal Courts ⇨ 1037

Court engages in a two-part inquiry to determine whether it may exercise personal jurisdiction over a non-resident defendant; first, the court must determine whether jurisdiction may be exercised under the district's long-arm statute, and second, the court must determine whether the exercise of personal jurisdiction satisfies due process requirements. *Simpson v. Federal Bureau of Prisons*, 2007, 496 F.Supp.2d 187. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1041

7. Discovery

Copyright owner was not entitled to jurisdictional discovery to learn true identities, addresses, and telephone numbers of unidentified participants in filesharing swarm, in action alleging participants violated Copyright Act by illegally downloading, uploading, and distributing owner's copyrighted movie over Internet, absent showing that participants from whom jurisdictional discovery was sought resided in District of Columbia within meaning of District's long-arm statute. *People Pictures, LLC v. Group of Participants in Filesharing Swarm Identified by Hash: 43F4CFD05C115EE5887F680B0-CA78B1BA18B434A*, 2011, 2011 WL 6758462. Copyrights and Intellectual Property ⇨ 84

Under District of Columbia law, owner of copyright in adult film was not entitled to jurisdictional discovery to discover identities of 1,434 John Doe defendants who allegedly used torrent network to unlawfully download and upload film in violation of Copyright Act, absent showing that owner had good faith belief that any particular individual defendants were domiciled in District of Columbia. *West Coast Productions, Inc. v. Does 1-1,434*, 2012, 2012 WL 336174. Copyrights and Intellectual Property ⇨ 84

§ 13-423. Personal jurisdiction based upon conduct.

United States Supreme Court

Access to courts

Access to courts, identification of underlying cause of action and lost remedy, government conspiracy to destroy or cover up evidence of crime, torture and death of foreign spouse of American citizen by for-

eign army officers allegedly paid by the CIA, see *Christopher v. Harbury*, 2002, 122 S.Ct. 2179, 536 U.S. 403, 153 L.Ed.2d 413, on remand 44 Fed.Appx. 522, 2002 WL 1902635.

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1. In general

In determining whether exercise of personal jurisdiction over defendant is reasonable or fair, court may examine forum state's interest in adjudicating the dispute, and if plaintiff is not a resident of the forum, forum state's legitimate interests in the dispute have considerably diminished. *Formica v. Cascade Candle Co.*, 2001, 125 F.Supp.2d 552. Federal Courts ⇨ 76.1

In personam jurisdiction generally is determined as of the commencement of an action. In re *Orshansky*, 2002, 804 A.2d 1077, on subsequent appeal 952 A.2d 199. Courts ⇨ 39

It is reasonable and fair for District of Columbia to exercise specific jurisdiction where a nonresident defendant has purposefully directed its activities at District residents, and claims against it by a District resident arise out of or relate to, or have a substantial connection with, the business transacted in the District. U.S.C.A. Const.Amends. 5, 14; D.C.Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Federal Courts ⇨ 1051

District of Columbia has a manifest interest in providing a convenient forum in which its residents may seek relief for injuries inflicted by nonresident defendant, especially where litigation within District would not impose an undue burden on nonresident defendant. U.S.C.A. Const.Amends. 5, 14; D.C.Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Federal Courts ⇨ 1051

2. Construction and application

The District of Columbia subsection of the long-arm statute that governs personal jurisdiction based upon conduct of an agent permits the exercise of personal jurisdiction to the full extent permitted by the Due Process Clause of the Constitution. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1037

District of Columbia's long-arm statute is given an expansive interpretation that is coextensive with the due process clause. *GasPlus, L.L.C. v. U.S. Dept. of Interior*, 2006, 466 F.Supp.2d 43. Federal Courts ⇨ 1037

The section of the District of Columbia long-arm statute authorizing jurisdiction based on the transaction of business in the District does not require physical presence in the District, but does require a business transaction that has some minimal nex-

us to the District. *Doe I v. State of Israel*, 2005, 400 F.Supp.2d 86. Federal Courts ⇨ 1037

Under District of Columbia law, personal jurisdiction can be satisfied either by demonstrating that the court has general jurisdiction pursuant to statute, or that the court has personal jurisdiction pursuant to the District of Columbia long-arm statute. *Islamic American Relief Agency v. Unidentified FBI Agents*, 2005, 394 F.Supp.2d 34, affirmed in part and remanded 477 F.3d 728, 375 U.S.App.D.C. 93, certiorari denied 128 S.Ct. 92, 552 U.S. 816, 169 L.Ed.2d 20. Federal Courts ⇨ 1037

Statutory limitation for long-arm jurisdiction over a foreign corporation, that the claim must arise from the act or acts conferring jurisdiction over the corporation, is meant to exclude from courts of District of Columbia (D.C.) all claims that do not bear some relationship to the acts in D.C. relied upon to confer jurisdiction; however, once some relationship to acts in D.C. is established, this statutory provision does not limit the scope of the claim to activity within D.C. *Jackson v. Loews Washington Cinemas, Inc.*, 2008, 944 A.2d 1088. Federal Courts ⇨ 1051

2.5. Construction with federal law

Employees' claims that employer violated FLSA by refusing to pay minimum wage, agreed-upon wages, and/or overtime wages for employees' cleaning services primarily performed in Virginia and retaliating by terminating employees for requesting wages did not satisfy requirements for specific jurisdiction over employer, where claims arose from activity outside forum of District of Columbia, and did not otherwise bring case within scope of District of Columbia's long-arm statute. *Azamar v. Stern*, 2009, 662 F.Supp.2d 166. Federal Courts ⇨ 1041

District of Columbia's long-arm statute, granting personal jurisdiction over an individual as to a claim for relief arising from the person's transacting any business in the District of Columbia, is given an expansive interpretation that is coextensive with the Due Process Clause. *National Community Reinvestment Coalition v. NovaStar Financial, Inc.*, 2009, 604 F.Supp.2d 26. Federal Courts ⇨ 1037

District of Columbia's long-arm jurisdictional statute applies in the absence of any federal long-arm statute. *Buesgens v. Brown*, 2008, 567 F.Supp.2d 26. Federal Courts ⇨ 417

District of Columbia's long-arm statute, which authorizes exercise of personal jurisdiction based on defendant's conduct in or directed toward District of Columbia, is given an expansive interpretation that is coextensive with the Due Process Clause. *NAWA USA, Inc. v. Bottler*, 2008, 533 F.Supp.2d 52, appeal dismissed 2008 WL 5453996. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1037

4. Bases for jurisdiction—In general

District court lacked personal jurisdiction over federal officials in their individual capacities under

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District of Columbia long-arm statute in *Bivens* action alleging that officials denied federal prisoner promotions and back pay for his employment with Department of Justice's Federal Prison Industries (UNICOR) program while in Federal Bureau of Prisons' (BOP) custody; officials worked at federal prison in West Virginia and did not reside in District of Columbia, and officials had not transacted business, supplied services, or caused tortious injury to prisoner within District of Columbia. *Morton v. Bolyard*, 2011, 810 F.Supp.2d 112. Federal Courts ⇨ 1037

Arrestee who alleged he was falsely arrested and prosecuted in West Virginia on drug charge failed to plead any jurisdictional facts showing that case fell under District of Columbia's long-arm statute, and thus District of Columbia lacked specific personal jurisdiction over action. *Brooks v. Harris*, 2011, 808 F.Supp.2d 206. Federal Courts ⇨ 1037

Allegations by applicant for admission to the bar that he was harmed by allegedly libelous letter sent by his ex-wife from Maryland to the Committee on Admissions (COA) in the District of Columbia were insufficient to plead connection between alleged tort and any act committed by ex-wife in District, as required for personal jurisdiction over ex-wife in District of Columbia for applicant's action alleging various claims against ex-wife, including intentional interference with prospective economic advantage and civil conspiracy. *Stoddard v. Carlin*, 2011, 799 F.Supp.2d 57. Federal Courts ⇨ 1041

If a defendant does not reside within or maintain a principal place of business in the District of Columbia, then the District's long-arm statute, provides the only basis on which a court may exercise personal jurisdiction over the defendant. *Quality Air Services, L.L.C. v. Milwaukee Valve Co., Inc.*, 2008, 567 F.Supp.2d 96. Federal Courts ⇨ 1041

A District of Columbia court engages in two-part inquiry in order to determine whether it may exercise personal jurisdiction over a non-resident defendant; first, the court must determine whether jurisdiction may be exercised under District of Columbia's long-arm statute and, second, court must determine whether exercise of personal jurisdiction satisfies due process requirements. *Metcalf v. Federal Bureau of Prisons*, 2008, 530 F.Supp.2d 131. Federal Courts ⇨ 1037

Difference between jurisdiction under Clayton Act section providing for proper forum in which to bring antitrust action against corporation and District of Columbia (D.C.) long-arm statute is that while both look at contacts with district, under Clayton Act provision transactions do not have to be related to cause of action or subject matter of suit, while under D.C. long-arm statute there must be connection between jurisdictional contacts and cause of action. *Diamond Chemical Co., Inc. v. Atofina Chemicals, Inc.*, 2003, 268 F.Supp.2d 1. Antitrust And Trade Regulation ⇨ 969; Federal Courts ⇨ 1051

5. — Consent or waiver, bases for jurisdiction

Consent order between British tobacco company, and Federal Trade Commission (FTC), in which FTC approved company's purchase of American subsidiary, could not form basis for exercise of personal jurisdiction over company under District of Columbia long-arm statute, on basis that company had transacted business in District, in action in which United States sought to recover health care expenses incurred in treating patients for smoking-related illnesses, and to disgorge profits under Racketeer Influenced and Corrupt Organizations Act (RICO), where consent order expressly stated that company consented to jurisdiction in District only for purposes of that agreement, and any proceedings arising out of or to enforce agreement. *U.S. v. Philip Morris Inc.*, 2000, 116 F.Supp.2d 116. Federal Courts ⇨ 86

6. Extent of jurisdiction, generally

In determining whether the notions of fair play and substantial justice would be furthered by a finding of personal jurisdiction over nonresident defendant, court must consider the following: the burden to defendant in defending the suit in the jurisdiction; jurisdiction's interest in adjudicating the dispute; plaintiff's interest in obtaining convenient and effective relief; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies. *Brunson v. Kalil & Co., Inc.*, 2005, 404 F.Supp.2d 221. Constitutional Law ⇨ 3964

District of Columbia long-arm statute is coextensive in reach with personal jurisdiction allowed by due process clause. U.S.C.A. Const.Amends. 5, 14; D.C.Code 1981, § 13-423(a)(1). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Federal Courts ⇨ 1051

7. General or specific jurisdiction

Courts of the District of Columbia may assert general jurisdiction over a defendant that is doing business in the District through the medium of the Internet. *Gorman v. Ameritrade Holding Corp.*, C.A.D.C.2002, 293 F.3d 506, 352 U.S.App.D.C. 229. Federal Courts ⇨ 1051

Purported owner of copyright or pertinent exclusive rights to motion picture was not entitled to jurisdictional discovery in its copyright infringement action against 23,222 John Doe defendants, arising from defendants' alleged use of "BitTorrent protocol" to download and upload pirated copy of movie, as to putative defendants who resided outside of District; for purposes of District of Columbia's long-arm statute, owner resided in California such that, under test regarding location of injury, no amount of discovery could affect analysis placing location of injury in California, and, alternatively, under theory of economic injury, situs of owner's injuries was location of defendants' downloads and uploads. *Nu Image, Inc. v. Does*

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1-23,322, 2011, 799 F.Supp.2d 34, 102 U.S.P.Q.2d 1114. Copyrights and Intellectual Property ⇨ 84

District court lacked specific personal jurisdiction over energy company sued by municipalities alleging illegal agreement to artificially inflate price of natural gas, pursuant to District of Columbia long-arm statute; municipalities' allegation that company had participated in subcommittee of National Petroleum Council (NPC) that prepared natural gas pricing at high levels lacked factual particularity. *City of Moundridge, KS v. Exxon Mobil Corp.*, 2007, 471 F.Supp.2d 20, motion to amend denied 244 F.R.D. 10, reconsideration denied 250 F.R.D. 1. Federal Courts ⇨ 1037

Competitor's display of allegedly infringing product at trade show in District of Columbia did not constitute infringing "offer to sell" product necessary to establish specific personal jurisdiction over competitor in patent infringement action pursuant to District of Columbia's long-arm statute, even though approximately one hundred clinical professionals left their contact information for competitor, and competitor's booth made product more visible to potential customers, where price for allegedly infringing product was not made available to show attendees. *Medical Solutions, Inc. v. C Change Surgical LLC*, 2006, 468 F.Supp.2d 130, affirmed 541 F.3d 1136, 88 U.S.P.Q.2d 1275, rehearing denied. Patents ⇨ 288(3)

Competitor's display of allegedly infringing product at trade show in District of Columbia did not constitute infringing "use" of product necessary to establish specific personal jurisdiction over competitor in patent infringement action pursuant to District of Columbia's long-arm statute. *Medical Solutions, Inc. v. C Change Surgical LLC*, 2006, 468 F.Supp.2d 130, affirmed 541 F.3d 1136, 88 U.S.P.Q.2d 1275, rehearing denied. Patents ⇨ 288(3)

For personal jurisdiction to exist over individual Israeli defendants, they were required to have sufficient minimum contacts with District of Columbia, which could exist in two forms: (1) general contacts that were continuous and systematic, such that the forum had jurisdiction over any matter involving the defendants, and (2) specific contacts that gave rise to the actual claims against the defendants. *Doe I v. State of Israel*, 2005, 400 F.Supp.2d 86. Federal Courts ⇨ 1037

District Court for the District of Columbia did not have general jurisdiction over government agent who resided and worked in Missouri. *Islamic American Relief Agency v. Unidentified FBI Agents*, 2005, 394 F.Supp.2d 34, affirmed in part and remanded 477 F.3d 728, 375 U.S.App.D.C. 93, certiorari denied 128 S.Ct. 92, 552 U.S. 816, 169 L.Ed.2d 20. Federal Courts ⇨ 1037

If nonresident defendant's business contacts are sufficiently continuous and systematic within forum jurisdiction, court may exercise general jurisdiction. U.S.C.A. Const.Amends. 5, 14; D.C.Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari

denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Federal Courts ⇨ 1051

If nonresident defendant's business contacts within forum jurisdiction are not sufficiently continuous and systematic, court may assert specific jurisdiction over defendant whenever defendant has purposefully directed its activities at residents of forum, and the litigation has resulted from alleged injuries that arise out of or relate to those activities. U.S.C.A. Const.Amends. 5, 14; D.C.Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Federal Courts ⇨ 1051

Nexus requirement of District of Columbia long-arm statute is satisfied, and specific jurisdiction may be exercised, if claim either arises out of or relates to nonresident defendant's business activity. D.C.Code 1981, § 13-423(b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Federal Courts ⇨ 1051

8. Federal jurisdiction, generally

United States District Court for the District of Columbia engages in a two-part inquiry to determine whether it may exercise personal jurisdiction over a non-resident defendant: first, the court must determine whether jurisdiction may be exercised under the District of Columbia's long-arm statute; second, the Court must determine whether the exercise of personal jurisdiction satisfies due process requirements. *Walton v. Federal Bureau of Prisons*, 2008, 533 F.Supp.2d 107. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1041

District Court lacked personal jurisdiction over Bureau of Indian Affairs (BIA) Regional Director, requiring dismissal of all claims against Director in action alleging that gasoline distribution company's due process rights were violated when BIA invalidated company's agreement to manage a gasoline distribution business for Indian tribe; claim did not arise out of Director's activities in the District of Columbia, and Director had insufficient contacts with District to subject him to jurisdiction pursuant to District's long-arm statute. *GasPlus, L.L.C. v. U.S. Dept. of Interior*, 2006, 466 F.Supp.2d 43. Federal Courts ⇨ 1037

For a court to exercise personal jurisdiction over a non-resident, prospective defendant's contacts with the jurisdiction must be such that the defendant reasonably could have anticipated being sued in the forum state in an action arising out of those contacts. *Baltierra v. West Va Bd. of Medicine*, 2003, 253 F.Supp.2d 9. Federal Courts ⇨ 76.5

When a defendant asserts that federal court lacks personal jurisdiction, the burden is on the plaintiff to prove that jurisdiction can be exercised. *Baltierra v. West Va Bd. of Medicine*, 2003, 253 F.Supp.2d 9. Federal Courts ⇨ 96

Federal court sitting in District of Columbia had personal jurisdiction over non-resident attorneys who had represented tort plaintiff in District of Columbia litigation, in malpractice suit by plaintiff's children who alleged that they were negli-

gently advised not to include their claims in suit; claim "arose out of" attorneys' activities in District, they could reasonably have anticipated being haled into District of Columbia court by children, and court, which had had exclusive jurisdiction over underlying tort suit, had interest in adjudicating related malpractice claim. *Jacobsen v. Oliver*, 2002, 201 F.Supp.2d 93. Federal Courts ⇨ 1037

9. Establishing jurisdiction, generally

Test for determining whether District of Columbia court would have personal jurisdiction over securities broker, based on broker's conduct of electronic transactions within District through use of Internet website, would be the traditional test of asking whether broker's contacts with District were continuous and systematic. *Gorman v. Ameritrade Holding Corp.*, C.A.D.C.2002, 293 F.3d 506, 352 U.S.App.D.C. 229. Federal Courts ⇨ 1051

If securities broker's contacts with District of Columbia, consisting entirely of electronic transactions through Internet website, were continuous and systematic, they provided basis for personal jurisdiction of District courts over real estate broker's action alleging that securities broker failed to honor contract to provide front-page link to real estate broker's website. *Gorman v. Ameritrade Holding Corp.*, C.A.D.C.2002, 293 F.3d 506, 352 U.S.App.D.C. 229. Federal Courts ⇨ 1051

Lenders were not resident corporations for purposes of District of Columbia statute providing for personal jurisdiction based upon an enduring relationship, where they were citizens of Delaware and/or New Jersey, and at no time were they domiciled in or organized under the laws of the District of Columbia, nor did they maintain their principal place of business in the District of Columbia. *Rossmann v. Chase Home Finance, LLC*, 2011, 772 F.Supp.2d 169. Federal Courts ⇨ 1037

Nonresident lenders were not subject to personal jurisdiction in borrower's action alleging that they misapplied his property tax payments, thereby causing foreclosure of his property, under District of Columbia's long-arm statute, where the case arose out of alleged conduct of three Delaware and New Jersey entities regarding property in Virginia, no tortious conduct was alleged to have occurred in the District of Columbia, and borrower did not allege that he suffered any injury in the District of Columbia. *Rossmann v. Chase Home Finance, LLC*, 2011, 772 F.Supp.2d 169. Federal Courts ⇨ 1037

To determine whether there is a sufficient connection between a defendant and the District of Columbia for exercise of personal jurisdiction, the determination is made: (1) whether there is an applicable long-arm statute that would authorize service on the defendant, and then (2) whether the application of such a statute would comply with the demands of due process. *Buesgens v. Brown*, 2008, 567 F.Supp.2d 26. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1037

Court engages in a two-part inquiry to determine whether it may exercise personal jurisdiction

over non-resident defendants: (1) the Court determines whether jurisdiction may be exercised under the District of Columbia's long-arm statute; and (2) the Court determines whether the exercise of personal jurisdiction satisfies due process requirements. *Banks v. Lappin*, 2008, 539 F.Supp.2d 228. Constitutional Law ⇨ 3964

Specific jurisdiction requires a lesser showing than general jurisdiction that nevertheless must satisfy a two-step inquiry: (1) jurisdiction over the defendant must be authorized by the forum's long-arm statute, and (2) the exercise of that jurisdiction must satisfy the federal requirement of constitutional due process. *D'Onofrio v. SFX Sports Group, Inc.*, 2008, 534 F.Supp.2d 86. Federal Courts ⇨ 76.10

Personal jurisdiction was lacking over son of construction company principal, under District of Columbia long arm statute, in suit brought by representative claiming reputational injury arising from her representation of company in bidding for Egyptian government contracts, while bid rigging was going on without her knowledge; statement of allegedly fraudulent conduct or statements was excessively vague, as were allegations that conduct took place in District. *Elemery v. Philipp Holzmann A.G.*, 2008, 533 F.Supp.2d 116. Federal Courts ⇨ 1037

District Court for District of Columbia did not have personal jurisdiction over officials in American Samoa in inmate's action alleging refusal to provide off-island medical treatment violated his Eighth Amendment rights, absent evidence that any of the defendants other than Secretary of Interior ever transacted business in the District of Columbia, contracted to supply services in the District of Columbia, contracted to insure or act as a surety for anyone or any agreement located, executed, or to be performed within the District of Columbia, held an interest in, used, or possessed real property in the District of Columbia, or had a marital or parent and child relationship in the District of Columbia, or such injuries occurred or manifested in the District of Columbia as required by the District of Columbia long-arm statute. *Majhor v. Kempthorne*, 2007, 518 F.Supp.2d 221. Federal Courts ⇨ 1037

To establish personal jurisdiction under the District of Columbia subsection of the long-arm statute that governs personal jurisdiction based upon conduct of an agent, a plaintiff must demonstrate that: (1) the defendant transacted business in the District of Columbia; (2) the claim arose from the business transacted in the District; (3) the defendant had minimum contacts with the District; and (4) the court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1037

On motion to dismiss for lack of personal jurisdiction, plaintiff bears burden of establishing factual basis for court's exercise of personal jurisdiction over defendant; plaintiff must allege specific acts

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connecting defendant with forum. *Ulico Cas. Co. v. Fleet Nat. Bank*, 2003, 257 F.Supp.2d 142. Federal Courts ⇨ 94; Federal Courts ⇨ 96

In determining whether factual basis for personal jurisdiction exists, court should resolve factual discrepancies appearing in record in favor of plaintiff. *Ulico Cas. Co. v. Fleet Nat. Bank*, 2003, 257 F.Supp.2d 142. Federal Courts ⇨ 96

Court, ruling on motion to dismiss for lack of personal jurisdiction, need not treat all of plaintiff's factual allegations as true; rather, court may receive and weigh affidavits and any other relevant matter to assist it in determining jurisdictional facts. *Ulico Cas. Co. v. Fleet Nat. Bank*, 2003, 257 F.Supp.2d 142. Federal Courts ⇨ 96

The District of Columbia's long-arm statute requires a significant connection between the claim and alleged contact with the forum. *Gowens v. Dyncorp*, 2001, 132 F.Supp.2d 38. Federal Courts ⇨ 1041

There are no mechanical tests or talismanic formulas for determination of personal jurisdiction under District of Columbia long-arm statute, and facts of each case must be weighed against notions of fairness, reasonableness, and substantial justice. U.S.C.A. Const.Amends. 5, 14; D.C.Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Federal Courts ⇨ 1051

11. Injury within District, generally

Failure to make showing of injuries occurring in District of Columbia, as required by long arm statute, precluded personal jurisdiction in suit by representative of company, alleging that son of principal violated Racketeer Influenced and Corrupt Organizations Act (RICO), by arranging for her to be attacked by "hitman" as part of interference with prospective relationship under which representative would serve as exclusive case manager in qui tam action against company; physical injury damages were sustained by representative in California, where she lived, rather than District. *Elemery v. Philipp Holzmann A.G.*, 2008, 533 F.Supp.2d 116. Federal Courts ⇨ 1037

"Domicile," for purposes of determining appropriateness of exercising personal jurisdiction under provision of District of Columbia's long-arm statute, granting personal jurisdiction over defendant who causes tortious injury in the District of Columbia by an act or omission in the District, requires both physical presence and intent to remain for an indefinite period of time. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App.D.C. 178. Federal Courts ⇨ 1037

In distinguishing between act or omission which produces injury and injury itself, when determining whether exercise of personal jurisdiction is appropriate under provision of District of Columbia long-arm statute, granting personal jurisdiction over defendant who causes tortious injury in the District of Columbia by an act or omission in the District, locus of injury for individual suffering

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peculiarly at home is her home. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App.D.C. 178. Federal Courts ⇨ 1037

In determining whether exercise of personal jurisdiction is appropriate under provision of District of Columbia long-arm statute, granting personal jurisdiction over defendant who causes tortious injury in the District of Columbia by an act or omission in the District, district court must distinguish between injury suffered and any pecuniary losses, which are merely one measure of such injury. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App.D.C. 178. Federal Courts ⇨ 1037

Even if girlfriend, a citizen of the Russian Federation, committed fraud in District of Columbia when she allegedly misrepresented that she would assist boyfriend in obtaining apartment in Moscow, Russia and that she would repay boyfriend for her personal expenses, boyfriend did not suffer any injury from the alleged fraud in the District of Columbia, so as to support exercise of personal jurisdiction over girlfriend, under provision of District of Columbia long-arm statute, granting personal jurisdiction over defendant who causes tortious injury in the District of Columbia by an act or omission in the District. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App.D.C. 178. Federal Courts ⇨ 1037

In order for provision of District of Columbia long-arm statute, granting personal jurisdiction based on conduct over person who causes tortious injury in the District of Columbia by an act or omission in the District, to apply, both tortious injury and act causing the injury must occur in the District of Columbia. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App.D.C. 178. Federal Courts ⇨ 1037

District Court did not have personal jurisdiction, pursuant to District of Columbia's general jurisdiction statute, over federal government contractor with respect to claim by contractor's employee that contractor failed to provide him per diem payments, inasmuch as former employee served contractor at its headquarters in Virginia, not within District. *Gowens v. Dyncorp*, 2001, 132 F.Supp.2d 38. Federal Courts ⇨ 1037

12. Due process, generally

Even if District of Columbia long-arm statute permitted court in inmate's action against government officials in American Samoa, medical center, and its officers and employees to exercise personal jurisdiction over the American Samoa and medical center defendants in their individual capacities, holding defendants personally liable would not comport with the fundamental notions of fair play and substantial justice, and thus would violate defendants' due process rights, absent evidence that any of the American Samoa or medical center defendants purposefully directed any activities at

residents of the District of Columbia or that any of the defendants had any contacts, ties, or relation to the District of Columbia other than through plaintiff's lawsuit. *Majhor v. Kempthorne*, 2007, 518 F.Supp.2d 221. Constitutional Law ⇨ 3965(11); Federal Courts ⇨ 1037

Personal jurisdiction over Israeli officials, pursuant to District of Columbia long-arm statute, in action by Palestinian residents of West Bank arising from development of settlements, would offend due process guarantees, given tenuous and fortuitous nature of connection between alleged contact and United States. *Doe I v. State of Israel*, 2005, 400 F.Supp.2d 86. Constitutional Law ⇨ 3965(11); Federal Courts ⇨ 1037

The District of Columbia long-arm statute only goes as far as the Due Process Clause will permit. *Doe I v. State of Israel*, 2005, 400 F.Supp.2d 86. Federal Courts ⇨ 1037

District of Columbia's long-arm provision allows for personal jurisdiction to the fullest extent permissible under the Due Process Clause. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Federal Courts ⇨ 1037

Requirements of due process are satisfied where the exercise of personal jurisdiction over a nonresident defendant does not offend traditional notions of fair play and substantial justice. *U.S. v. Philip Morris Inc.*, 2000, 116 F.Supp.2d 116. Constitutional Law ⇨ 3964

"Transacting any business" provision of District of Columbia long-arm statute permits the exercise of personal jurisdiction over nonresident defendants to the extent permitted by the Due Process Clause of the Federal Constitution, and, accordingly, exercise of personal jurisdiction must satisfy the "minimum contacts" due process requirement in addition to statutory requirement that the claim for relief arise from the act or acts conferring jurisdiction. *Jackson v. Loews Washington Cinemas, Inc.*, 2008, 944 A.2d 1088. Federal Courts ⇨ 1051

A court may assert personal jurisdiction over a nonresident defendant where service of process is authorized by statute and where the service of process so authorized is consistent with due process. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1051

A critical inquiry in an analysis of minimum contacts and personal jurisdiction under the due process clause is whether the defendant has purposefully directed its activities at residents of the forum. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Constitutional Law ⇨ 3964

The minimum contacts analysis does not constitute a mechanical test in which courts apply talismanic jurisdictional formulas to determine whether the Superior Court may properly exercise personal jurisdiction over any given defendant consistent with the due process clause. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Constitutional Law ⇨ 3964

The due process standard for personal jurisdiction is not satisfied through the mere likelihood that a product will find its way into the forum state without any other relevant contacts between the defendant and the forum. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Constitutional Law ⇨ 3965(4)

13. Minimum contacts—In general

Certification of question to District of Columbia Court of Appeals was warranted, as to whether petition sent to federal government agency located in District provided basis for establishing personal jurisdiction over petitioner when plaintiff has alleged that petition fraudulently induced unwarranted government action against it, since scope of "government contacts" exception to District's personal jurisdiction statute was uncertain and resolution of question could affect numerous individuals and corporations that petitioned the federal government. *Companhia Brasileira Carbureto de Calcio v. Applied Indus. Materials Corp.*, C.A.D.C. 2011, 640 F.3d 369, 395 U.S.App.D.C. 106, certified question answered 35 A.3d 1127, answer to certified question conformed to 2012 WL 555650. Federal Courts ⇨ 392

District of Columbia court lacked personal jurisdiction over nonresident borrower in lender's action to recover money due under promissory note, even if borrower had made payments to lender across interstate lines while lender resided in District of Columbia, where borrower had never been domiciled in District of Columbia, borrower's principal place of business had not been in District of Columbia, and lender had not loaned money to borrower within District of Columbia, nothing in promissory notes referred to District of Columbia, and promissory notes contained California and Texas addresses for parties and stated that notes were to be governed and interpreted under laws of State of Texas. *Atwal v. Myer*, 2012, 2012 WL 266876. Federal Courts ⇨ 1037

Coworker and owner of Florida job corps center (JCC), providing education and career technical training program administered by United States Department of Labor, lacked minimum contacts with District of Columbia (D.C.), as necessary to satisfy due process requirements for exercise of specific personal jurisdiction over coworker and owner, under D.C.'s long-arm statute, in employee's action claiming sexual harassment in violation of Title VII and violation of Equal Protection Clause, where coworker resided and worked for JCC in Florida and had only visited D.C. once over 10 years ago, alleged sexual harassment in Florida JCC did not arise from visit to D.C., and owner was Ohio citizen, with offices in Ohio, and had no contacts with D.C. at all. *Bond v. ATSI/Jacksonville Job Corps Center*, 2011, 811 F.Supp.2d 417. Constitutional Law ⇨ 3965(9); Federal Courts ⇨ 1037

Employees of a federal government agency did not fall within the scope of the District of Columbia long-arm statute for personal jurisdiction in inmate's *Bivens* action, where employees had not

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transacted business, contracted to supply services or caused tortious injury in the District of Columbia. *Baez v. Connelly*, 2010, 734 F.Supp.2d 54. Federal Courts ⇨ 1037

Vermont hospital did not have requisite minimum contacts with the District of Columbia to make it subject to a lawsuit in the District of Columbia, consistent with due process, since hospital's only contact with the District of Columbia, its report to National Practitioners Data Bank of its decision to suspend his hospital privileges because of concerns about his fitness to practice medicine, was excluded from minimum contacts analysis as a contact with the federal government. *Agee v. Sebelius*, 2009, 668 F.Supp.2d 1. Constitutional Law ⇨ 3965(5); Federal Courts ⇨ 1041

Portion of personal jurisdiction analysis requiring district court to determine whether jurisdiction satisfies due process requirements turns on whether a defendant's "minimum contacts" with District of Columbia establish that maintenance of suit does not offend traditional notions of fair play and substantial justice. *Ballard v. Holinka*, 2009, 601 F.Supp.2d 110. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1037

Traditional notions of fair play and substantial justice counseled against exercising personal jurisdiction over commercial truck driver under District of Columbia's long-arm statute in suit seeking damages for personal injuries resulting when driver's truck was stolen outside his Maryland home and driven by thief into District of Columbia where it crashed into plaintiffs' vehicle; driver, who drove truck to and from Maryland and the District of Columbia to deliver furniture for his employers but did not provide any financing for his employers, did not form any corporate entities, and did not make any business decisions, did not purposely avail himself of the privilege of conducting activities in the forum such that he could anticipate being haled into court there. *Bailey v. J & B Trucking Services, Inc.*, 2008, 577 F.Supp.2d 116. Constitutional Law ⇨ 3965(5); Federal Courts ⇨ 1037

Condemnation by City of Newark, New Jersey, of property within its city limits did not give rise to any contacts with District of Columbia that could support assertion of personal jurisdiction under District's long-arm statute. *Black v. City of Newark*, 2008, 535 F.Supp.2d 163. Federal Courts ⇨ 1037

For purposes of establishing jurisdiction under the District of Columbia long-arm statute, it is contacts with the District, and not the nation as a whole, that are critical. *Heller v. Nicholas Applegate Capital Management, LLC*, 2007, 498 F.Supp.2d 100. Federal Courts ⇨ 1037

A single act, so long as it creates a substantial connection with forum, is sufficient for exercise of personal jurisdiction under District of Columbia long-arm statute. *Heller v. Nicholas Applegate Capital Management, LLC*, 2007, 498 F.Supp.2d 100. Federal Courts ⇨ 1037

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Personal jurisdiction under District of Columbia long-arm statute is proper where actions by a defendant himself establishes a substantial connection with the forum. *Heller v. Nicholas Applegate Capital Management, LLC*, 2007, 498 F.Supp.2d 100. Federal Courts ⇨ 1037

University's government relations and lobbying connections to the District of Columbia do not form a basis for asserting personal jurisdiction under long-arm statute; the government contacts exception to the transacting business provision of a long-arm statute allows for petitioning the government and for the redress of grievances. *Richards v. Duke University*, 2007, 480 F.Supp.2d 222. Federal Courts ⇨ 1037

Under District of Columbia law, in determining whether a court can exercise personal jurisdiction over defendants under its long-arm statute, the question is whether defendants purposefully established minimum contacts with the District of Columbia such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *FC Investment Group LC v. Lichtenstein*, 2006, 441 F.Supp.2d 3. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1037

Contacts of out-of-state defendant law firms and companies with District of Columbia did not relate to factual circumstances giving rise to suit, which alleged that defendants participated in litigation fraud in Colorado-based suits, as required to exercise personal jurisdiction over them, even assuming that most of alleged fraud occurred through interstate mail, absent showing that any of it occurred in District of Columbia. *Sieverding v. American Bar Ass'n*, 2006, 439 F.Supp.2d 111, motion for relief from judgment denied 239 F.R.D. 5. Federal Courts ⇨ 1037

Florida accounting firm was not subject to personal jurisdiction in the District of Columbia under the District's long-arm statute by virtue of its employees' attendance at continuing education programs, seminars, and conferences in the District, absent evidence that the trips involved doing or soliciting business, or that they were regular in nature or otherwise exemplified a persistent course of conduct. *Burman v. Phoenix Worldwide Industries, Inc.*, 2006, 437 F.Supp.2d 142. Federal Courts ⇨ 1037

District court lacked personal jurisdiction over vice president of human resources for hotel chain in Title VII action brought by hotel employee, given that vice president lived and worked in Canada and employee, whose only reference to vice president in complaint concerned letter that he sent to vice president's office in Canada, alleged no facts that would bring vice president within reach of District of Columbia's long-arm statute. *Rogers v. Washington Fairmont Hotel*, 2005, 404 F.Supp.2d 56. Federal Courts ⇨ 86; Federal Courts ⇨ 94

Federal district court sitting in District of Columbia did not have specific personal jurisdiction, under District long-arm statute, over group of interrelated entities engaged in Peruvian mining

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operations, in suit brought by caterer alleging wrongful interference with its business in Peru; required minimum contacts between group and District of Columbia were not established through negotiations in District with District based bank, producing loan funds presumably used to pay catering charges. *AGS Intern. Services S.A. v. Newmont USA Ltd.*, 2004, 346 F.Supp.2d 64. Federal Courts ⇨ 84

State Administrator of Maryland State Board of Election was not subject to personal jurisdiction in District of Columbia in action alleging violation of National Voter Registration Act as result of Administrator's failure to designate Washington Metropolitan Area Transit Authority (WMATA) disability office as voter registration site, absent allegation that Administrator had any personal or official contacts with District, or that alleged violation arose from her official contacts with District. *National Coalition for Students with Disabilities v. Miller*, 2002, 298 F.Supp.2d 16. Federal Courts ⇨ 76.5

In order to satisfy Due Process Clause's requirement on "minimum contacts" for exercise of personal jurisdiction, defendant's conduct and connection with forum state must be such that he should reasonably anticipate being haled into court there. *Ulico Cas. Co. v. Fleet Nat. Bank*, 2003, 257 F.Supp.2d 142. Constitutional Law ⇨ 3964

Due Process, in the context of personal jurisdiction, is satisfied where a defendant has minimum contacts with the forum jurisdiction such that the exercise of personal jurisdiction will not offend traditional notions of fair play and substantial justice. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Constitutional Law ⇨ 3964

Minimum contacts, for the purpose of personal jurisdiction under the Due Process Clause, are established where a defendant purposefully avails itself of the privilege of conducting activities within the forum jurisdiction such that the defendant should reasonably anticipate being haled into court there. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Constitutional Law ⇨ 3964

To determine whether the exercise of personal jurisdiction over nonresident defendant satisfies traditional notions of fair play and substantial justice, and thus comports with due process, court must consider two issues: whether defendant has minimum contacts with forum, and whether exercising jurisdiction would be reasonable. *U.S. v. Philip Morris Inc.*, 2000, 116 F.Supp.2d 116. Constitutional Law ⇨ 3964

Telephone calls made by defendant in Maryland to recipients in District of Columbia were not by themselves sufficient to confer personal jurisdiction, pursuant to long-arm statute, over defendant in plaintiff's defamation action in the District of Columbia, even if defendant's alleged defamatory statements caused injury inside District, absent any other contacts by defendant with District.

Charlton v. Mond, 2010, 987 A.2d 436. Federal Courts ⇨ 1051

Under the long-arm statute, the defendant must have minimum contacts with the forum so that exercising personal jurisdiction over it would not offend traditional notions of fair play and substantial justice. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Federal Courts ⇨ 1051

13.5. — Persistent course of conduct, minimum contacts

Non-resident defendant did not have a regular or persistent course of conduct in the District of Columbia, as required for District of Columbia long-arm statute to confer personal jurisdiction over defendant in suit alleging breach of contract and tortious interference with contract; defendant had no personal business contacts with the District and had never transacted any personal business within it, his only contacts with the District were a four-day trip that he took with his family as a tourist and attendance at two conferences on behalf of his employer, neither of which related to the allegations contained in the lawsuit. *Dean v. Walker*, 2010, 756 F.Supp.2d 100. Federal Courts ⇨ 1037

Alabama not-for-profit organization devoted to fighting discrimination and extremism engaged in a persistent course of conduct in the District of Columbia sufficient to establish personal jurisdiction over it, under the District of Columbia long-arm statute, in defamation case based on its publishing an article describing District resident as a revisionist historian, where it created a network of contacts in the District through its website and other means to distribute thousands of copies of its magazines and solicit millions of dollars in donations to support its operations, it sent its employees to the District for training programs and conferences, and it collected information on hate groups in the District. *Lewy v. Southern Poverty Law Center, Inc.*, 2010, 723 F.Supp.2d 116. Federal Courts ⇨ 1037

For a website to constitute a persistent course of conduct within the District of Columbia, for purposes of long-arm jurisdiction, it must meet a certain level of interactivity; at the very least, it must allow browsers to interact directly with the web site on some level. *Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell*, 2008, 578 F.Supp.2d 164. Federal Courts ⇨ 1037

The mere maintenance of a website accessible to Internet users in the District of Columbia does not amount to any persistent course of conduct within the meaning of the long-arm statute. *Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell*, 2008, 578 F.Supp.2d 164. Federal Courts ⇨ 1037

Members of sorority's legislative body had requisite minimum contacts with the forum such that exercise of personal jurisdiction over members in action by sorority members concerning irregularities in financial management complied with due process; the legislative sessions were held in the

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forum over the course of a full week, the sessions dealt with the management of the sorority, which was incorporated in the forum, and all of the named members of the legislative body voluntarily participated in the sessions. *Daley v. Alpha Kappa Alpha Sorority, Inc.*, 2011, 26 A.3d 723. Constitutional Law ⇨ 3965(2); Federal Courts ⇨ 1051

14. — Purposeful conduct, minimum contacts

Egyptian private equity firm did not purposefully avail itself of privilege of conducting activities within the District of Columbia (D.C.), and thus firm was not subject to specific personal jurisdiction in D.C. in trademark infringement suit under section of D.C. long-arm statute authorizing courts to exercise jurisdiction over any person who transacted business in D.C., though firm attended global private equity conference in D.C. and served as lead sponsor and reception sponsor; conference was international in scope and was not directed specifically at D.C. residents, and there was no evidence participation in conference resulted in sales of firm's services. *Citadel Inv. Group, L.L.C. v. Citadel Capital Co.*, 2010, 699 F.Supp.2d 303. Trademarks ⇨ 1559

Netherlands law firm's entering into contract to provide legal services to Delaware corporation with principal place of business in District did not by itself establish minimum contacts or constitute purposeful availment required to exercise personal jurisdiction over firm on the basis of transacting business in corporation's action in federal district court in District of Columbia alleging legal malpractice. *Exponential Biotherapies, Inc. v. Houthoff Buruma N.V.*, 2009, 638 F.Supp.2d 1. Federal Courts ⇨ 1037

If exception to fiduciary shield doctrine applied, mortgagee's nonresident president had purposeful minimum contacts with forum, based on mortgagee's pattern of accepting applications from and making loans to forum residents that was attributable to president, sufficient for exercise of jurisdiction over president, under Due Process Clause and District of Columbia's long-arm statute, that would not offend traditional notions of fair play and substantial justice, in Fair Housing Act suit alleging that mortgagee discriminated against Native Americans, people with disabilities, and African Americans. *National Community Reinvestment Coalition v. NovaStar Financial, Inc.*, 2009, 604 F.Supp.2d 26. Constitutional Law ⇨ 3965(10); Federal Courts ⇨ 1037

Under District of Columbia law, personal jurisdiction exists when defendant has purposely established minimum contacts with forum state and when exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *Ventura v. BEBO Foods, Inc.*, 2009, 595 F.Supp.2d 77. Federal Courts ⇨ 1037

The Court's minimum contacts inquiry, with respect to exercise of personal jurisdiction over a nonresident defendant under District of Columbia's long-arm statute, should be guided by a search for meaningful acts reflecting purposeful

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affirmative activity within the District of Columbia. *Quality Air Services, L.L.C. v. Milwaukee Valve Co., Inc.*, 2008, 567 F.Supp.2d 96. Federal Courts ⇨ 1041

Ohio newspaper and its reporter that published article on newspaper's website referring to plaintiff as a pedophile did not have minimum contacts with the District of Columbia such that the maintenance of plaintiff's defamation action would offend traditional notions of fair play and substantial justice; article was written for an Ohio publication that is distributed almost exclusively in Ohio, and newspaper and reporter did not purposefully avail themselves of the privilege of doing business in the District. *Copeland-Jackson v. Oslin*, 2008, 555 F.Supp.2d 213. Constitutional Law ⇨ 3965(8); Constitutional Law ⇨ 3965(10); Federal Courts ⇨ 1037

By condemning property within its city limits, City of Newark, New Jersey, did not purposefully avail itself of privilege of conducting activities within District of Columbia, as required to assert personal jurisdiction over City under District of Columbia long-arm statute consonant with due process. *Black v. City of Newark*, 2008, 535 F.Supp.2d 163. Federal Courts ⇨ 1037

Purposeful availment requirement, for purposes of District of Columbia long-arm jurisdiction, ensures that personal jurisdiction shall not arise solely as a result of random, fortuitous, or attenuated contacts. *Heller v. Nicholas Applegate Capital Management, LLC*, 2007, 498 F.Supp.2d 100. Federal Courts ⇨ 1037

For an exercise of personal jurisdiction under District of Columbia long-arm statute, it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the District, thus invoking the benefits and protections of its laws. *Heller v. Nicholas Applegate Capital Management, LLC*, 2007, 498 F.Supp.2d 100. Federal Courts ⇨ 1037

University's recruiting activities to meet with students in the District of Columbia and the residence of some students and adjunct faculty in the District of Columbia do not separately, or in the aggregate, constitute regular business, persistent conduct, or receipt of substantial revenue from the District of Columbia as required to assert personal jurisdiction under its long-arm statute. *Richards v. Duke University*, 2007, 480 F.Supp.2d 222. Federal Courts ⇨ 1037

Under District of Columbia law, contacts with district by director of corporation were purposefully directed at investment company, which was located in district, and therefore exercise of personal jurisdiction over director of corporation was consistent with due process in investment company's action for fraud against director of corporation and his law firm alleging that they operated a sham currency trading scheme; director spoke with investor by telephone numerous times and sent faxes, which allegedly communicated false information about the corporation, its investments,

and the return of investment company's funds, at least some of the calls and faxes were initiated by director, director allegedly benefited personally from contacts, district had interest in adjudicating the suit because investment company operated in district, and adjudicating suit in district was efficient and did not interfere with any fundamental substantive social policy. *FC Investment Group LC v. Lichtenstein*, 2006, 441 F.Supp.2d 3. Constitutional Law ⇨ 3965(10); Federal Courts ⇨ 1037

For there to be personal jurisdiction under District of Columbia's long-arm statute, plaintiff must allege some specific facts evidencing purposeful activity by defendants in District of Columbia by which they invoked benefits and protections of its laws and specific acts connecting defendants with forum. *Robinson v. Ashcroft*, 2004, 357 F.Supp.2d 146. Federal Courts ⇨ 1041

In order to assert jurisdiction over a foreign defendant under the long-arm statute, the defendant must have purposefully directed its activities at residents of the forum; the non-resident defendant's conduct and connection with the forum state must be such that he should reasonably anticipate being haled into court there. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Federal Courts ⇨ 1051

Business contacts between a nonresident defendant and the forum must be voluntary and deliberate, rather than fortuitous and accidental, in order to provide a basis for the exercise of personal jurisdiction over the defendant consistent with due process. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Constitutional Law ⇨ 3965(3)

A defendant's awareness that the stream of commerce may or will sweep the product into the forum state does not convert the mere act of placing the product into the stream into an act which is purposefully directed toward the forum state and is a permissible basis for exercising personal jurisdiction consistent with the due process clause. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Constitutional Law ⇨ 3965(4)

Under due process clause, the minimum contacts principle for court's exercise of personal jurisdiction over nonresident defendant requires court to examine the quality and nature of defendant's contacts with District of Columbia and whether those contacts are voluntary and deliberate or only random, fortuitous, tenuous, and accidental. U.S.C.A. Const.Amends. 5, 14; D.C.Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Constitutional Law ⇨ 3964

District Court lacked personal jurisdiction over non-resident cable services provider, absent showing that provider performed actions within District of Columbia sufficient to bring defendant under jurisdiction of District. *Tall v. Credit Protection Ass'n*, C.A.D.C.2011, 439 Fed.Appx. 1, 2011 WL 4915156, Unreported. Federal Courts ⇨ 1037

14.5. — Third party actions, minimum contacts

Unilateral activity of another party or a third person does not give rise to personal jurisdiction under District of Columbia long-arm statute. *Heller v. Nicholas Applegate Capital Management, LLC*, 2007, 498 F.Supp.2d 100. Federal Courts ⇨ 1037

15. Connection with injury, generally

Under District of Columbia law, Swiss company was not subject to specific personal jurisdiction in District in action alleging that corporation obtained plaintiff's interest in business that was confiscated by Uzbekistan's government, where plaintiff's principal place of business was in Uzbekistan, and there was no evidence that any transfers or transactions relevant to plaintiff's claims for relief occurred in District. *Roz Trading Ltd v. Zeromax Group, Inc.*, 2007, 517 F.Supp.2d 377. Federal Courts ⇨ 1037

Under District of Columbia law, Delaware banking associations were not subject to specific personal jurisdiction in District in action to recover damages arising from fraudulently endorsed check, even though one association's subsidiary had branch locations in District, where associations had no agent, did no business, owned no property, and maintained no bank accounts in District, and there was no evidence that checking transaction on which plaintiff based its claims had connection with District. *Capital Bank Intern. Ltd. v. Citigroup, Inc.*, 2003, 276 F.Supp.2d 72. Federal Courts ⇨ 1037

In examining nonresident defendant's contacts with District of Columbia for determination of whether court has personal jurisdiction, focus is placed on relationship among defendant, the forum, and the litigation. U.S.C.A. Const.Amends. 5, 14; D.C.Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Federal Courts ⇨ 1051

Nexus requirement of District of Columbia long-arm statute bars only claims unrelated to the acts forming the basis for personal jurisdiction. D.C.Code 1981, § 13-423(b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Federal Courts ⇨ 1051

16. Transacting business—In general

Personal jurisdiction under the theory of transacting any business in the District of Columbia is limited to claims arising from the particular transaction of business in the District. *World Wide Minerals, Ltd. v. Republic of Kazakhstan*, C.A.D.C. 2002, 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Courts ⇨ 13.3(11)

Under the District of Columbia's long-arm statute, local courts may exercise so-called "specific jurisdiction" over a person for claims that arise from the person's transacting any business in the District. *Gorman v. Ameritrade Holding Corp.*,

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C.A.D.C.2002, 293 F.3d 506, 352 U.S.App.D.C. 229. Federal Courts ⇨ 1051

Transacting any business prong of District of Columbia's long-arm statute permits exercise of personal jurisdiction to full extent authorized by Due Process Clause. *Gillespie v. Capitol Reprographics, LLC*, 2008, 573 F.Supp.2d 80. Federal Courts ⇨ 1037

A single act may be sufficient to constitute transacting business, within the meaning of the District of Columbia long-arm statute, so long as that contact is voluntary and deliberate, rather than fortuitous. *Quality Air Services, L.L.C. v. Milwaukee Valve Co., Inc.*, 2008, 567 F.Supp.2d 96. Federal Courts ⇨ 1041

Persistent conduct undertaken in a person's individual capacity may constitute the transaction of business for purposes of the District of Columbia long-arm statute. *Walton v. Federal Bureau of Prisons*, 2008, 533 F.Supp.2d 107. Federal Courts ⇨ 1041

Persistent conduct undertaken in a person's individual capacity may constitute the transaction of business for purposes of District of Columbia's long-arm statute. *Metcalfe v. Federal Bureau of Prisons*, 2008, 530 F.Supp.2d 131. Federal Courts ⇨ 1037

Personal jurisdiction over nonresident broker under "transacting business" provision of District of Columbia long-arm statute could be based only on the acts that had occurred at the time the complaint was filed, not on those acts occurring after complaint was filed. *Brunson v. Kalil & Co., Inc.*, 2005, 404 F.Supp.2d 221. Federal Courts ⇨ 1037

Existence of District of Columbia subscriber to music-downloading website was sufficient to satisfy "transacting business" element of District's long-arm statute, for purpose of determining whether federal court had personal jurisdiction over non-resident website operator, in copyright infringement action brought by record companies. *Arista Records, Inc. v. Sakfield Holding Co. S.L.*, 2004, 314 F.Supp.2d 27, 71 U.S.P.Q.2d 1035. Copyrights And Intellectual Property ⇨ 79

"Transacting any business" clause of District of Columbia long-arm statute requires same contacts as constitutional due process. *Ulico Cas. Co. v. Fleet Nat. Bank*, 2003, 257 F.Supp.2d 142. Federal Courts ⇨ 1037

To obtain personal jurisdiction over a non-resident defendant under the "transacting business" provision of the District of Columbia's long-arm statute, a plaintiff must assert three elements with specificity: the non-resident must have transacted business within the District, the contact must give rise to the claim, and the assertion must be consistent with due process considerations. *Gowens v. Dyncorp*, 2001, 132 F.Supp.2d 38. Federal Courts ⇨ 1041

To establish personal jurisdiction under the "transacting business" clause of the District of Columbia's long-arm statute, plaintiff must demonstrate that (1) defendant transacted business in the

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District of Columbia; (2) claim arose from the business transacted in District of Columbia (so-called specific jurisdiction); (3) defendant had minimum contacts with District of Columbia; and (4) court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. *Formica v. Cascade Candle Co.*, 2001, 125 F.Supp.2d 552. Federal Courts ⇨ 1041

United States failed to establish that British tobacco company engaged in business, derived substantial revenue, or engaged in any persistent course of conduct in the District of Columbia, as would establish basis for exercise of jurisdiction over company pursuant to District of Columbia long-arm statute in action in which United States sought to recover health care expenses incurred in treating patients for smoking-related illnesses, and to disgorge profits under Racketeer Influenced and Corrupt Organizations Act (RICO). *U.S. v. Philip Morris Inc.*, 2000, 116 F.Supp.2d 116. Federal Courts ⇨ 86

To obtain personal jurisdiction over a nonresident defendant under "transacting business" clause of District of Columbia's long-arm statute, plaintiff must assert three requirements with specificity: that non-resident defendant transacted business within District of Columbia, that that contact gave rise to claim, and that assertion of personal jurisdiction was consistent with due process considerations. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Constitutional Law ⇨ 3965(3); Federal Courts ⇨ 1037

"Arising under" element of "transacting business" clause of District of Columbia's long-arm statute was not satisfied by meetings which allegedly contributed to conspiracy between New York corporation and Kazakhstan and allegedly occurred at Kazakhstan embassy, given that meetings occurred after Canadian corporation that allegedly was denied uranium export license by Kazakhstan due to conspiracy suffered such injury. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Federal Courts ⇨ 1037

A single act may be sufficient to constitute "transacting business" within District of Columbia under long-arm jurisdiction statute, so long as that contact is voluntary and deliberate, rather than fortuitous. *Jackson v. Loews Washington Cinemas, Inc.*, 2008, 944 A.2d 1088. Federal Courts ⇨ 1051

The only nexus required between the District of Columbia and the nonresident defendant, under the "transacting any business" provision of long-arm jurisdiction statute, is some affirmative act by which the defendant brings itself within the jurisdiction and establishes minimum contacts. *Jackson v. Loews Washington Cinemas, Inc.*, 2008, 944 A.2d 1088. Federal Courts ⇨ 1051

Non-resident client "transacted business" in District of Columbia, as basis for long-arm jurisdiction over client, in law firm's action to collect attorney fees; client retained the services of the District of Columbia office of law firm, to avail itself of law firm's specialized expertise in securities regulation. *Digital Broadcast Corp. v. Rosenman & Colin, LLP*, 2004, 847 A.2d 384. Federal Courts ⇨ 1051

In the absence of any significant connection between nonresident manufacturer and the District of Columbia, manufacturer's extraterritorial participation in an alleged criminal conspiracy to fix prices of citric acid, however culpable, was not "transacting any business in the District of Columbia" within the meaning of long-arm statute. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Federal Courts ⇨ 1051

17. — Extent of jurisdiction, transacting business

Swedish photographer who sued German restaurant corporation, alleging illegal use of her copyrighted works as central part of restaurant dZcor, would be permitted jurisdictional discovery on question of specific personal jurisdiction; photographer had good-faith basis for requesting discovery of jurisdictional evidence, and evidence could have established whether corporation's ties with District of Columbia were sufficient to show that company was "doing business" within District. *Rundquist v. Vapiano SE*, 2011, 798 F.Supp.2d 102. Federal Courts ⇨ 1037

Sweep of the "transacting any business" clause within District of Columbia's long-arm statute covers any transaction of business in the District of Columbia that can be reached jurisdictionally without offending the due process clause. *Heller v. Nicholas Applegate Capital Management, LLC*, 2007, 498 F.Supp.2d 100. Federal Courts ⇨ 1037

Broker's communication with Federal Communications Commission (FCC) and the Securities and Exchange Commission (SEC) in District of Columbia related to his general business dealings did not qualify as "transacting business" in the District within meaning of District of Columbia long-arm statute. *Brunson v. Kalil & Co., Inc.*, 2005, 404 F.Supp.2d 221. Federal Courts ⇨ 1037

Nonresident seller's suit against nonresident broker seeking declaration that broker was not owed funds under brokerage agreement pertaining to sale of a New Jersey television station did not arise from business transacted in the District of Columbia, and therefore specific personal jurisdiction was lacking over broker under "transacting business" provision of District of Columbia long-arm statute; broker traveled to Philadelphia in order to solicit the brokerage agreement, which was formed in Philadelphia, there was no solicitation, negotiation, or formation of the brokerage agreement which occurred in the District, and closing of sale of television station in District occurred pursuant to the purchase agreement, not the brokerage agreement. *Brunson v. Kalil & Co., Inc.*, 2005, 404 F.Supp.2d 221. Federal Courts ⇨ 1037

Nonresident bank, which had contracted to provide banking services to District of Columbia company, transacted business in District within meaning of long-arm statute, and thus was subject to specific personal jurisdiction of court in customer's action for wrongful honoring of counterfeit checks; bank had visited company offices to install software, train users, and strengthen customer relations. *Ulico Cas. Co. v. Fleet Nat. Bank*, 2003, 257 F.Supp.2d 142. Federal Courts ⇨ 1037

18. — Establishing jurisdiction, transacting business

District court had personal jurisdiction over lender's assignee in action brought by personal guarantor of loan, seeking injunctive and declaratory relief regarding whether he was released from guaranty to pay loan, under transacting any business provision of District of Columbia's long-arm statute, where assignee laid claim to guarantor's assets that served as collateral for guaranty, including those located in District, by taking assignment of guaranty and by later agreeing to reassign guaranty back to lender and to share in collection proceeds, which agreement was executed in District, was expressly governed by District's laws, and provided that assignee was to receive 90% of any recovery obtained by initial assignor. *Farouki v. Petra Intern. Banking Corp.*, 2011, 811 F.Supp.2d 388. Federal Courts ⇨ 1037

Bahamian law firm was not transacting business in the District of Columbia when it represented a Nevada client in her quest to obtain information about a Bahamian bank account allegedly opened by client's mother, as required for District of Columbia to assert specific jurisdiction over law firm under District of Columbia's long-arm statute, in lawsuit brought by client alleging law firm engaged in conspiracy with bank to hide existence of account. *Day v. Cornèr Bank (Overseas) Ltd.*, 2011, 789 F.Supp.2d 150. Federal Courts ⇨ 1037

Bahamian bank, bank's manager, and bank's Swiss parent were not transacting business in the District of Columbia when Bahamian bank allegedly opened an account for a Kansas citizen, as required to establish specific jurisdiction over banks and manager under District of Columbia's long-arm statute, in lawsuit brought by account holder's daughter, a Nevada citizen, alleging she possessed rights to the alleged account. *Day v. Cornèr Bank (Overseas) Ltd.*, 2011, 789 F.Supp.2d 150. Federal Courts ⇨ 1037

District court did not have jurisdiction under District of Columbia's long-arm statute over California state court in action brought by property owner asserting various claims concerning property in California; the California court had not engaged in any activity in the District of Columbia, and forcing it to litigate in District of Columbia may offend traditional notions of fair play and substantial justice. *Barbieri v. Aurora Loan Services, LLC*, 2010, 724 F.Supp.2d 98. Constitutional Law ⇨ 3965(11); Federal Courts ⇨ 1037

Minnesota attorney who allegedly represented non-profit corporation in connection with its acqui-

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sition of properties in District of Columbia was subject to specific personal jurisdiction in District in corporation's action alleging that attorney breached his fiduciary duties by assisting board member execute unauthorized memorandum of understanding with donor concerning those properties, despite attorney's contention that he never represented corporation, where corporation alleged that attorney acted as its representative, and produced multiple letters signed by attorney in connection with acquisition of properties, including one that he expressly signed as counsel. *Armenian Genocide Museum and Memorial, Inc. v. Cafesjian Family Foundation, Inc.*, 2009, 607 F.Supp.2d 185. Federal Courts ⇨ 1037

In determining whether to assert personal jurisdiction over nonresident defendant pursuant to District of Columbia long-arm statute, courts must examine whether quality and nature of nonresident defendant's contacts with District are voluntary and deliberate or only random, fortuitous, tenuous and accidental, whether defendant has purposefully availed itself of benefits and protections of District in engaging in business activity in forum jurisdiction, and whether it is fair and reasonable to expect it to anticipate being sued in that jurisdiction. *Armenian Genocide Museum and Memorial, Inc. v. Cafesjian Family Foundation, Inc.*, 2009, 607 F.Supp.2d 185. Federal Courts ⇨ 1037

Federal district court in District of Columbia could not exercise personal jurisdiction over American International School of Bucharest (AISB), as non-profit unincorporated educational entity organized under authority of United States and government of Romania in Romania, or its board of directors, under "transacting any business" clause of District of Columbia long-arm statute on basis that AISB had been incorporated in State of Delaware or AISB defendants' contacts with United States Department of State through its award of annual grant for specific purpose of purchasing textbooks or upgrading security. *Ficken v. Rice*, 2009, 594 F.Supp.2d 71. Federal Courts ⇨ 1037

To determine whether District of Columbia long-arm statute reaches the conduct at issue, courts must consider whether plaintiffs had sufficient contacts with the District such that the assertion of personal jurisdiction comports with due process. *Heller v. Nicholas Applegate Capital Management, LLC*, 2007, 498 F.Supp.2d 100. Constitutional Law ⇨ 3964

In action brought by consumers against officers and employees of defunct advertising company, stemming from receipt of unwanted facsimile transmissions, district court lacked personal jurisdiction over non-resident employee under District of Columbia long-arm statute; although employee allegedly assisted with arranging or paying for locations or billing for computers and/or phone lines used in fax network, he did not transact business, enter into contracts or cause tortious injury in District of Columbia. *Kopff v. Battaglia*, 2006, 425 F.Supp.2d 76. Federal Courts ⇨ 1041

While "general personal jurisdiction" permits a court to hear a suit without regard to the underly-

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ing claim's relationship to the defendant's activity in the forum, "specific personal jurisdiction" allows only those claims based on acts of a defendant that touch and concern the forum. *Brunson v. Kalil & Co., Inc.*, 2005, 404 F.Supp.2d 221. Federal Courts ⇨ 76.5; Federal Courts ⇨ 76.10

To establish personal jurisdiction under "transacting business" provision of District of Columbia long-arm statute, plaintiff must establish that: (1) defendant transacted business in the District, (2) claim arose from the business in the District, (3) defendant had minimum contacts with the jurisdiction, and (4) court's exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App.D.C. 178. Federal Courts ⇨ 1037

Federal district court sitting in District of Columbia did not have personal jurisdiction over non-resident natural gas shippers and pipeline operators, in suit claiming conspiracy to circumvent regulations governing equitable allocation of rights to receive uninterrupted natural gas during annual periods of shortage, under District of Columbia long-arm provision conferring jurisdiction when business was transacted in District, despite claim that shippers and operators had furthered scheme by filing false information with Federal Energy Regulatory Commission (FERC). *Atlantigas Corp. v. Nisource, Inc.*, 2003, 290 F.Supp.2d 34, appeal dismissed 2003 WL 22971974. Federal Courts ⇨ 1037

Federal district court sitting in District of Columbia did not have personal jurisdiction over non-resident natural gas shippers and pipeline operators, in suit claiming conspiracy to circumvent regulations governing equitable allocation of rights to receive uninterrupted natural gas during annual periods of shortage, under District of Columbia long-arm provision conferring jurisdiction when business was transacted in District; defendants' activities in District involved contact with federal government, which did not constitute business transaction. *Atlantigas Corp. v. Nisource, Inc.*, 2003, 290 F.Supp.2d 34, appeal dismissed 2003 WL 22971974. Federal Courts ⇨ 1037

In order for there to be personal jurisdiction under transacting business provision of District of Columbia long-arm statute, claim must arise from business transacted in District. *Atlantigas Corp. v. Nisource, Inc.*, 2003, 290 F.Supp.2d 34, appeal dismissed 2003 WL 22971974. Federal Courts ⇨ 1037

To establish personal jurisdiction under "transacting business" clause of District of Columbia's long-arm statute, plaintiff must demonstrate that (1) defendant transacted business in District of Columbia; (2) claim arose from business transacted in District of Columbia; (3) defendant had minimum contacts with District of Columbia; and (4) court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. *Jacobsen v. Oliver*, 2002, 201 F.Supp.2d 93. Federal Courts ⇨ 1051

United States failed to establish that British tobacco company transacted any business in District of Columbia, as would establish basis for exercise of jurisdiction over company pursuant to District of Columbia long-arm statute in action in which United States sought to recover health care expenses incurred in treating patients for smoking-related illnesses, and to disgorge profits under Racketeer Influenced and Corrupt Organizations Act (RICO). *U.S. v. Philip Morris Inc.*, 2000, 116 F.Supp.2d 116. Federal Courts ⇨ 86

What guides the minimum contacts inquiry, with respect to exercise of personal jurisdiction over a nonresident defendant under long-arm statute, is a search for meaningful acts reflecting purposeful, affirmative activity within the District of Columbia. *Jackson v. Loews Washington Cinemas, Inc.*, 2008, 944 A.2d 1088. Federal Courts ⇨ 1051

The nexus requirement for personal jurisdiction over nonresident defendant transacting business within District of Columbia (D.C.), that claim must arise from the act or acts conferring jurisdiction, means only that the claim raised must have a discernible relationship to the "business" transacted in D.C. *Jackson v. Loews Washington Cinemas, Inc.*, 2008, 944 A.2d 1088. Federal Courts ⇨ 1051

Mexican elevator repair company did not make any misrepresentations to American Embassy employee or take any active steps to prevent her from suing company when it mistakenly wrote that it was incorporated in California in its contract with the embassy, rather than Baja California, and thus, the company was not equitably estopped from asserting a lack of personal jurisdiction in employee's personal injury action, where the company made a typographical error in drafting the contract, but corrected the error as soon as it was discovered, and at most the company may have temporarily caused the embassy to think that the company was incorporated in the United States rather than Mexico. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Estoppel ⇨ 83(1)

Assuming that Mexican elevator repair company transacted business in the District, the company could not have reasonably foreseen being haled into court in the District as required to assert jurisdiction under the long-arm statute, where the company did not purposefully direct any activities toward the District, but rather supplied another company, which did business throughout the United States, with elevator parts. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Courts ⇨ 13.4(3)

19. — Due process, transacting business

In determining whether exercise of personal jurisdiction in the District of Columbia over nonresident defendant was authorized by the Due Process Clause, the appropriate inquiry is whether defendant had the requisite minimum contacts with the District so that the exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. *Quality Air Ser-*

vices, L.L.C. v. Milwaukee Valve Co., Inc., 2008, 567 F.Supp.2d 96. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1041

The transacting any business prong of the District of Columbia long-arm statute permits the exercise of personal jurisdiction to the full extent authorized by the Due Process Clause of the Constitution. *Quality Air Services, L.L.C. v. Milwaukee Valve Co., Inc.*, 2008, 567 F.Supp.2d 96. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1041

Manufacturer of valves used in heating, ventilation, and air conditioning (HVAC) systems purposefully availed itself of the benefits of doing business in District of Columbia, and, thus, was subject to personal jurisdiction in the District, consistent with due process and the District of Columbia long-arm statute; although manufacturer had no physical presence in the District nor did it direct its advertising specifically at the District, manufacturer's network of authorized distributors included companies both in Maryland and Virginia which, given their geographic proximity, targeted contractors who served the Washington metropolitan area, manufacturer was aware that it was accessing and benefiting from the District of Columbia market through its sales to distributors in Virginia and Maryland, and manufacturer placed advertisements in trade journals with a national audience. *Quality Air Services, L.L.C. v. Milwaukee Valve Co., Inc.*, 2008, 567 F.Supp.2d 96. Federal Courts ⇨ 1041

With respect to personal jurisdiction, due process requires that (1) nonresident defendant purposefully avail itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws, (2) nonresident defendant reasonably anticipate being haled into court in the forum state, and (3) the suit cannot offend traditional notions of fair play and substantial justice; in addition, the "minimum contacts" must come about by an action of the defendant purposefully directed toward the forum state. *Brunson v. Kalil & Co., Inc.*, 2005, 404 F.Supp.2d 221. Constitutional Law ⇨ 3964

Exercising personal jurisdiction over nonresident broker, who had not transacted business in District of Columbia, would not comport with due process; long-distance negotiations between defendant and the non-resident seller's lawyer, who happened to be located in the District, was not a significant enough contact to have caused defendant reasonably to anticipate being haled into court, and notions of fair play and substantial justice would not be furthered by a finding of personal jurisdiction since the documents, records, and witnesses broker would rely upon in defending itself were all located in Arizona, and District's legitimate interests in the dispute were considerably diminished by fact that both parties were nonresidents. *Brunson v. Kalil & Co., Inc.*, 2005, 404 F.Supp.2d 221. Constitutional Law ⇨ 3965(5); Federal Courts ⇨ 1037

"Transacting business" provision of the District of Columbia long-arm statute authorizes the exercise of personal jurisdiction to the full extent per-

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mitted by the Due Process Clause. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App. D.C. 178. Federal Courts ⇨ 1037

Provision of District of Columbia long-arm statute allowing exercise of personal jurisdiction over nonresident defendants who transacted business in District is coextensive in reach with the personal jurisdiction allowed by due process clause of Federal Constitution. *U.S. v. Philip Morris Inc.*, 2000, 116 F.Supp.2d 116. Federal Courts ⇨ 1051

The mere existence of a contract between a foreign corporation and a local resident is not enough to establish minimum contacts sufficient to satisfy due process in order to assert personal jurisdiction under the long-arm statute. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Constitutional Law ⇨ 3965(3); Courts ⇨ 13.5(3)

The "transacting business" prong of the long-arm statute is coextensive with the due process clause and, thus, covers any transaction of business in the District of Columbia that can be reached jurisdictionally without offending due process. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Federal Courts ⇨ 1051

Minimum contacts necessary for a court to exercise personal jurisdiction consistent with the due process clause based on the defendant transacting business must derive from the defendant having transacted any business in the District of Columbia. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Constitutional Law ⇨ 3965(3)

To satisfy the due process requirements associated with the exercise of personal jurisdiction over a nonresident defendant based on transacting business, the plaintiff must show that the defendant has purposefully engaged in some type of commercial or business-related activity directed at District of Columbia residents. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Constitutional Law ⇨ 3965(3)

Manufacturer of citric acid that was a component part of other products did not transact business in the District of Columbia and, therefore, was not subject to personal jurisdiction there under the long-arm statute or the due process clause in consumer's suit alleging price-fixing conspiracy; the manufacturer sold to other manufacturers outside the District and did not advertise in the District, and could not reasonably have foreseen being haled into court in the District, and its citric acid reached the District, if at all, through a chain of manufacturers, distributors, and retailers. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Constitutional Law ⇨ 3965(4); Federal Courts ⇨ 1051

Where nonresident defendant has purposefully availed itself of benefits and protections of District of Columbia in engaging in a business activity in forum jurisdiction, it is fair and reasonable to expect it to anticipate being sued in that jurisdiction. U.S.C.A. Const.Amend. 5, 14; D.C.Code 1981, § 13-423(a)(1), (b). *Shoppers Food Ware-*

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house v. Moreno, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Federal Courts ⇨ 1051

20. — Minimum contacts generally, transacting business

Local Department of Housing and Urban Development (HUD) foreclosure commissioner lacked sufficient contacts with forum to warrant district court's exercise of personal jurisdiction, pursuant to District of Columbia long-arm statute, in landlord's action stemming from foreclosure of housing complex; commissioner's appointment was effectuated exclusively by HUD's Texas office, and at no point did commissioner communicate with any HUD officials in District as to process at issue. *NBC-USA Housing, Inc., Twenty-Six v. Donovan*, 2011, 774 F.Supp.2d 277, appeal dismissed 674 F.3d 869. Federal Courts ⇨ 1037

District court did not, pursuant to either transacting business or contracting to supply services provisions of District of Columbia long-arm statute, have personal jurisdiction in federal inmate's civil rights action over Bureau of Prisons (BOP) officials, employees, and agents, Federal Bureau of Investigation (FBI) agent, Kansas Assistant United States Attorney (AUSA), or United States marshals; complaint made no allegations that such defendants had any personal connection with District of Columbia other than their federal employment, and mere fact that defendants were federal government employees, affiliated with agencies that were headquartered or maintained offices in District of Columbia, was insufficient to render them subject to suit in their individual capacities. *Akers v. Watts*, 2010, 740 F.Supp.2d 83. Federal Courts ⇨ 1037

Mortgagee and mortgagee's attorney lacked meaningful contacts with District of Columbia required for exercise of personal jurisdiction in compartment with due process in defaulted mortgagor's action in District of Columbia district court alleging that defendants conspired in bad faith to fraudulently obtain mortgagor's property; while defendants may have transacted business or contracted to supply services in District of Columbia, they had not done so with respect to foreclosure and subsequent sale of property located in Maryland which gave rise mortgagor's causes of action, foreclosure proceedings and any other litigation pertaining to mortgagor's interest in property took place in state and federal courts in Maryland, and defendants had not caused any injury to mortgagor within District of Columbia with respect to foreclosed property. *Kissi v. Panzer*, 2009, 664 F.Supp.2d 120. Constitutional Law ⇨ 3965(7); Federal Courts ⇨ 1037

Netherlands law firm's telephone calls, e-mails, facsimiles and mailings, including invoices, to Delaware corporation's District of Columbia office did not demonstrate purposeful availment or minimum contacts sufficient to subject firm to personal jurisdiction on the basis of transacting business in corporation's legal malpractice action in federal district court in District of Columbia; such commu-

nications were incidental to nearly every business relationship and were not indicative of any desire to do business in District. *Exponential Biotherapies, Inc. v. Houthoff Buruma N.V.*, 2009, 638 F.Supp.2d 1. Federal Courts ⇨ 1037

Persistent conduct undertaken in a person's individual capacity may constitute "transacting business," for purposes of determining whether district court has personal jurisdiction over that person under District of Columbia's long-arm statute. *Ballard v. Holinka*, 2009, 601 F.Supp.2d 110. Federal Courts ⇨ 1037

Mere fact that federal prison warden, who was non-resident, was employee of Bureau of Prisons (BOP), which was headquartered in District of Columbia, did not render her subject to suit in her individual capacity in District, in prisoner's action under §§ 1983 alleging violations of his First Amendment rights, and under Administrative Procedure Act. *Ballard v. Holinka*, 2009, 601 F.Supp.2d 110. Federal Courts ⇨ 1037

Plaintiff who brought suit against the former president of the Islamic Republic of Iran in his personal capacity failed to establish that personal jurisdiction existed under District of Columbia long-arm statute, based on allegations that defendant had visited the jurisdiction, and had explored business possibilities; there was no discernable connection between the alleged activities and plaintiff's claims for relief, which were predicated solely on the unrelated acts that took place in Iran. *Nikbin v. Islamic Republic of Iran*, 2007, 471 F.Supp.2d 53. Federal Courts ⇨ 1041

In action brought by consumers against officers and employees of defunct advertising company, stemming from receipt of unwanted facsimile transmissions, district court lacked personal jurisdiction over non-resident officer of telecommunications service provider under District of Columbia long-arm statute; although provider allegedly was primary carrier of faxes sent by company, consumers did not aver that officer regularly conducted or solicited business in District of Columbia or that he derived substantial revenue from goods used or consumed or services rendered in District. *Kopff v. Battaglia*, 2006, 425 F.Supp.2d 76. Federal Courts ⇨ 1041

Nonresident broker's single contact of a potential buyer of New Jersey television station in the District of Columbia was not significant enough for court to assert personal jurisdiction over broker under "transacting business" provision of District of Columbia long-arm statute. *Brunson v. Kalil & Co., Inc.*, 2005, 404 F.Supp.2d 221. Federal Courts ⇨ 1037

District court lacked personal jurisdiction under the "transacting business" prong of the District of Columbia long-arm statute over organizations involved in administration of graduate medical education, based on fact that they were "governing sponsors" of non-profit corporation whose principal office was in the District of Columbia, that they nominated two directors to corporation's board.

Jung v. Association of American Medical Colleges, 2004, 300 F.Supp.2d 119. Federal Courts ⇨ 1041

District court lacked personal jurisdiction over institutions which sponsored medical residency programs, under the "transacting business" prong of the District of Columbia long-arm statute, based on institutions' entry into institutional match contract with non-profit corporation whose principal office was in the District of Columbia, and accompanying electronic and/or mail correspondence institutions sent into the District in support of the contract; institutions could not reasonably anticipate being sued in the District on the basis of such contacts. *Jung v. Association of American Medical Colleges*, 2004, 300 F.Supp.2d 119. Federal Courts ⇨ 1041

Fact that credit card bills allegedly incurred by girlfriend, a citizen of the Russian Federation, on boyfriend's credit cards were sent to boyfriend's address in the District of Columbia was insufficient to establish requisite "substantial connection" with District to permit exercise of personal jurisdiction over girlfriend in District, under "transacting business" provision of District's long-arm statute, in connection with boyfriend's claim that she breached contract to repay bills; majority of bills were incurred outside the United States. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App.D.C. 178. Federal Courts ⇨ 1037

Under certain circumstances, single act may be adequate to bring defendant within reach of "transacting business" provision of District of Columbia long-arm statute. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App.D.C. 178. Federal Courts ⇨ 1037

When the corporation contesting jurisdiction is found to be nothing more than the alter ego of an affiliated corporation over which the district court does have jurisdiction, the affiliated corporation's jurisdictional contacts may be extended to reach the other corporate entity. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Federal Courts ⇨ 82

Federal district court in the District of Columbia did not have personal jurisdiction over manufacturer of candle, which had allegedly spontaneously exploded and caused injury, under the "transacting business" clause of the District of Columbia's long-arm statute, merely because manufacturer sold candles to a nationwide distributor that supplied the candle at issue to a retail store in the District of Columbia; the personal injury plaintiff was injured in Maryland and was resident of Maryland, manufacturer was based in Oregon, did not maintain offices or solicit business in the District, and manufacturer's arrangements with the distributor were independent of any contracts between distributor and its customer stores, as manufacturer did not receive any revenue from candle sales in the District. *Formica v. Cascade Candle Co.*, 2001, 125 F.Supp.2d 552. Federal Courts ⇨ 1037

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British tobacco company lacked sufficient contacts with District of Columbia to allow exercise of jurisdiction over company consistent with due process clause in action in which United States sought to recover health care expenses incurred in treating patients for smoking-related illnesses, and to disgorge profits under Racketeer Influenced and Corrupt Organizations Act (RICO); actions of other tobacco companies with which British company allegedly conspired could not be attributed to it, and British company had not purposefully directed its activities at District of Columbia. *U.S. v. Philip Morris Inc.*, 2000, 116 F.Supp.2d 116. Constitutional Law ⇨ 3965(4); Federal Courts ⇨ 86

New York corporation's involvement in nonprofit organization encouraging international trade with central Asia did not satisfy "transacting business" requirement for personal jurisdiction under "transacting business" clause of District of Columbia's long-arm statute, given absence of showing that organization was contact of substantial character for corporation. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Federal Courts ⇨ 1037

Under "transacting business" clause of District of Columbia's long-arm statute, corporation transacts business within the District only if the business is of a substantial character. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Federal Courts ⇨ 1037

District court closely adheres to requirement under "transacting business" clause of District of Columbia's long-arm statute that there be significant connection between claim and alleged contact with forum. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Federal Courts ⇨ 1037

New York corporation's acts of publishing advertising in District of Columbia and mailing trade magazines there were not related to alleged conspiracy with Kazakhstan to breach contract between Kazakhstan and Canadian corporation, as required for such contacts to satisfy requirement, under "transacting business" clause of District of Columbia long-arm statute, that alleged injury arise out of forum contacts. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Federal Courts ⇨ 1037

Personal jurisdiction did not exist over New York corporation under national service provisions of Clayton Act, given that corporation lacked sufficient contacts with District of Columbia to establish venue, as required. *World Wide Minerals*

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Ltd. v. Republic of Kazakhstan, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Federal Courts ⇨ 1037

Virginia physician's use of telephone to make single call to drugstore in District did not establish that physician was transacting business in District such that exercise of personal jurisdiction over physician in patient's case for failure to inform of risks of prescribed drug came within reach of long-arm statute; physician was not licensed in District, he did not maintain professional practice or residence in District, he did not advertise in District, he never treated or examined patient in District, and telephone call to drugstore in District was strictly to accommodate patient. *Harris v. Omeilon*, 2009, 985 A.2d 1103. Federal Courts ⇨ 1051

Mexican elevator repair company did not transact business within the District as required to assert jurisdiction over the company under the long-arm statute, where company supplied another company, which did business throughout the United States, with elevator parts that may or may not have been used in the District. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Courts ⇨ 13.4(3)

The "transacting business" standard for exercising long-arm jurisdiction is co-extensive with the minimum contacts necessary to establish personal jurisdiction under the Due Process Clause. *Digital Broadcast Corp. v. Rosenman & Colin, LLP*, 2004, 847 A.2d 384. Federal Courts ⇨ 1051

Even a small amount of in-jurisdiction business activity is generally enough to permit the conclusion, with respect to determination of personal jurisdiction, that a nonresident defendant has transacted business here. U.S.C.A. Const. Amends. 5, 14; D.C.Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Federal Courts ⇨ 1051

21. — Purposeful conduct, transacting business

Swedish law firm, its managing partner, and "of counsel" attorney "transacted business" in District of Columbia and thus invoked benefits and protections of laws of District, as was required for exercise of personal jurisdiction over firm and its attorneys in action brought against them by Swedish scientist and corporation, of which he was managing director and sole shareholder, for claims arising from their improper representation in numerous patent infringement actions; firm deliberately reached out beyond Sweden and voluntarily negotiated and entered into contract with firm in District, on behalf of their Swedish client, in order to obtain benefits of associating with District law firm in connection with scientist receiving legal representation in United States, and firm engaged in transaction which had substantial connection with District and which firm must have known would have consequences in District. *Lans v. Adduci*

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Mastriani & Schaumberg L.L.P., 2011, 786 F.Supp.2d 240. Federal Courts ⇨ 1037

Insurance agent transacted business in District of Columbia, and thus, was subject to District of Columbia's long-arm statute during district court's determination regarding agent's motion to dismiss immigrant's claims of fraudulent misrepresentation, breach of contract, gross negligence, unlawful trade practices, and violation of District of Columbia Consumer Protection Procedures Act for lack of jurisdiction, where immigrant alleged that he paid agent in District of Columbia, and that check was under immigrant's name and his address was in District of Columbia. *Jia Di Feng v. See-Lee Lim*, 2011, 786 F.Supp.2d 96. Federal Courts ⇨ 1037

Federal district court in District of Columbia could not assert personal jurisdiction over municipal housing authority in Louisiana in manner consistent with due process under District of Columbia long-arm statute regarding contract work performed in Louisiana and governed by Louisiana law, since authority did not have minimum contacts grounded in some act by which it had purposefully availed itself of privilege of conducting activities with District of Columbia, thus invoking the benefits and protections of its laws. *Fuentes-Fernandez & Company, PSC v. Caballero & Castellanos, PL*, 2011, 770 F.Supp.2d 277. Constitutional Law ⇨ 3965(11); Federal Courts ⇨ 1037

Federal district court in District of Columbia did not have personal jurisdiction over municipal housing authority in Louisiana under District of Columbia long-arm statute regarding contract work performed in Louisiana and governed by Louisiana law, since housing authority did not transact business in, contract for services in, cause tortious injury in, regularly soliciting business in, engage in persistent course of conduct in, or derive substantial revenue from goods used or consumed in, Washington, D.C. *Fuentes-Fernandez & Company, PSC v. Caballero & Castellanos, PL*, 2011, 770 F.Supp.2d 277. Federal Courts ⇨ 1037

While the District of Columbia long-arm statute is interpreted broadly and factual disputes are to be resolved in favor of the plaintiff, the plaintiff must allege some specific facts evidencing purposeful activity by the defendant in the District of Columbia by which it invoked the benefits and protections of the District's laws. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1041

Under the District of Columbia long-arm statute, personal jurisdiction may be based in part on a defendant's maintenance of a website that, in conjunction with other contacts with the District, supports an inference of purposeful availment. *Doe I v. State of Israel*, 2005, 400 F.Supp.2d 86. Federal Courts ⇨ 1037

Operation of website by United States congregation, allegedly to raise funds for settlement movement in West Bank, was not basis for personal

jurisdiction over congregation in action by Palestinian residents of West Bank, where residents did not assert that donations were made from within District or that residents of District were harmed, operation of website accessible in District was not purposeful availment, and website was essentially passive, not highly interactive. *Doe I v. State of Israel*, 2005, 400 F.Supp.2d 86. Federal Courts ⇨ 1037

For there to be personal jurisdiction under District of Columbia's long-arm statute, plaintiff must allege some specific facts evidencing purposeful activity by defendants in District of Columbia by which they invoked benefits and protections of its laws and specific acts connecting defendants with forum. *Robinson v. Ashcroft*, 2004, 357 F.Supp.2d 142. Federal Courts ⇨ 1037

In determining whether nonresident defendant's contacts with District of Columbia are sufficient under "transacting business" provision of its long-arm statute to support exercise of personal jurisdiction in District over defendant, district court must look at quality and nature of contacts, and contacts must illustrate deliberate and voluntary association with District on part of defendant. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App.D.C. 178. Federal Courts ⇨ 1037

Nonresident corporation that retrofitted mast on a news van which struck power line, electrocuting a news cameraman, purposefully transacted business within forum jurisdiction and had sufficient minimum contacts with forum, justifying forum court's exercise of personal jurisdiction over nonresident corporation, in cameraman's personal injury action, under both the Due Process Clause and the District of Columbia's long-arm statute; corporation had contract with forum-based corporation, for which it custom retrofitted and delivered news van, cost of sales transaction was significant, contract indicated that van would be used within forum jurisdiction, corporation delivered van directly to forum, and van itself was related to personal injury claim. *Manifold v. Wolf Coach, Inc.*, 2002, 231 F.Supp.2d 58. Constitutional Law ⇨ 3965(5); Federal Courts ⇨ 1037

Defendant's awareness that the stream of commerce may or will sweep its product into the forum state does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum state, for purposes of determining whether court has personal jurisdiction over the defendant. *Formica v. Cascade Candle Co.*, 2001, 125 F.Supp.2d 552. Federal Courts ⇨ 81

A nonresident defendant has minimum contacts with a jurisdiction, so that exercise of personal jurisdiction over defendant is consistent with due process clause, when it has purposefully directed its activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities; if a defendant purposefully directed its activities towards a forum, it can expect to be subject to jurisdiction in

that forum. *U.S. v. Philip Morris Inc.*, 2000, 116 F.Supp.2d 116. Constitutional Law ⇨ 3964

Listing of doctors, who practiced outside of District of Columbia, in District of Columbia telephone directory and in a directory of local physicians made available at the International Monetary Fund health center did not constitute transacting business for purposes of personal jurisdiction under the long-arm statute; doctors did not actively solicit patients in the District, but rather maintained passive listings of contact information, and thus, it was unfair to infer that doctors should have anticipated being subject to suit in the District of Columbia as a result of the listings. *Etchebarne-Bourdin v. Radice*, 2009, 982 A.2d 752, certiorari denied 131 S.Ct. 264, 178 L.Ed.2d 140. Federal Courts ⇨ 1051

Fact that the doctors, who practiced outside of District of Columbia, maintained medical licenses to practice in the District could not, without more, serve as a basis for jurisdiction under the "transacting any business" subsection of the long-arm statute. *Etchebarne-Bourdin v. Radice*, 2009, 982 A.2d 752, certiorari denied 131 S.Ct. 264, 178 L.Ed.2d 140. Federal Courts ⇨ 1051

Telephone call patient made to doctor, who practiced outside the District of Columbia, could not serve as a basis for jurisdiction over doctor under the long-arm statute and remain consistent with the limits of due process. *Etchebarne-Bourdin v. Radice*, 2009, 982 A.2d 752, certiorari denied 131 S.Ct. 264, 178 L.Ed.2d 140. Constitutional Law ⇨ 3965(5); Federal Courts ⇨ 1051

For an entity to be transacting business within the District of Columbia and to be subject to personal jurisdiction under the "transacting business" prong of the long-arm statute, some purposeful, affirmative activity within the District of Columbia is required. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Federal Courts ⇨ 1051

Mere foreseeability that a defendant's product would enter the District of Columbia alone is not enough to establish personal jurisdiction consistent with the due process clause; the foreseeability relevant to the personal jurisdiction analysis is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Constitutional Law ⇨ 3965(4)

22. — Presence within District, transacting business

Fact that securities broker's business in District of Columbia was conducted in "cyberspace" through electronic transactions at Internet website, as opposed to being conducted through physical presence, would not preclude District of Columbia court from having personal jurisdiction over broker. *Gorman v. Ameritrade Holding Corp.*, C.A.D.C.2002, 293 F.3d 506, 352 U.S.App.D.C. 229. Federal Courts ⇨ 1051

Fact that mayors from various cities discussed their respective public nuisance suits against gun

dealers and manufacturers at a mayors' conference in the District of Columbia was insufficient to allow exercise of personal jurisdiction over mayors in civil conspiracy action by the dealers and manufacturers, under provision of D.C. long-arm statute subjecting those who transact business in D.C. to personal jurisdiction there. *Second Amendment Foundation v. U.S. Conference of Mayors*, C.A.D.C.2001, 274 F.3d 521, 348 U.S.App.D.C. 238. Federal Courts ⇨ 1037

German corporation's flat-fee license agreement granting its United States franchisee an exclusive license to operate restaurants in the United States did not establish that corporation was transacting business in the District of Columbia, in which two of franchisee's restaurants were located, so as to support exercise of specific personal jurisdiction under District of Columbia's long-arm statute in copyright infringement action. *Rundquist v. Vapiano SE*, 2011, 798 F.Supp.2d 102. Federal Courts ⇨ 1037

Italian manufacturer's contacts with District of Columbia had sufficient nexus to distributor's claims to justify exercise of specific personal jurisdiction over manufacturer in distributor's action alleging breach of contract, unjust enrichment, and quantum meruit, where manufacturer entered into contract because it was interested in extending its market to United States, and its decision to register wholly-owned subsidiary and alter ego in District was part of its calculated expansion strategy that was subject of, and effectuated pursuant to, parties' contract. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 2010, 753 F.Supp.2d 141. Federal Courts ⇨ 1037

Italian manufacturer "transacted business" in District, within meaning of District of Columbia's long-arm statute, and thus was subject to specific personal jurisdiction in District in distributor's action alleging breach of contract, unjust enrichment, and quantum meruit, where manufacturer registered its wholly-owned subsidiary and alter ego in District, sent monthly wire transfers to distributor's office in District, and had numerous communications with distributor in District. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 2010, 753 F.Supp.2d 141. Federal Courts ⇨ 1037

Local cable television company that provided and supported national cable television company's services had no ability to control national cable company, particularly in regard to advertising decisions, and was, therefore, not in an agency relationship with national cable company, under District of Columbia law, as would allow federal court in District of Columbia to assert personal jurisdiction over local company, which had provided service to subscriber in Maryland, in cable television subscriber's action against cable company and credit agencies for violation of Fair Debt Collection Practices Act and Fair Credit Reporting Act; although the companies appeared to be engaged in a common enterprise, national cable company controlled purposes of company website, as well as its content, format, style, and overall design, local cable company only provided website with its par-

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ticular channel lineups and pricing, and national cable company created national advertising campaigns in which local cable company would choose whether or not to participate. *Tall v. Comcast of Potomac, LLC*, 2010, 729 F.Supp.2d 342, affirmed 439 Fed.Appx. 1, 2011 WL 4915156. Federal Courts ⇨ 1037; Principal And Agent ⇨ 1

Attendance at, and sponsorship of, a trade show is not, without more, sufficient to confer jurisdiction over a non-resident defendant under the section of the District of Columbia (D.C.) long-arm statute authorizing courts to exercise jurisdiction over any person who transacts any business in D.C. because where a trade show takes place will be, in many cases, fortuitous, and fortuitous contacts cannot give rise to personal jurisdiction. *Citadel Inv. Group, L.L.C. v. Citadel Capital Co.*, 2010, 699 F.Supp.2d 303. Federal Courts ⇨ 1037

Non-resident members of Broadcasting Board of Governors were physically within District of Columbia when they took alleged actions giving rise to former contractor's constitutional tort claims, including termination of contract for translation services, as required for court to have personal jurisdiction over members. *Navab-Safavi v. Broadcasting Bd. of Governors*, 2009, 650 F.Supp.2d 40, affirmed 637 F.3d 311, 394 U.S.App. D.C. 377. Federal Courts ⇨ 1037

Non-resident mortgage company president "was more than an employee" of company, precluding application of fiduciary shield doctrine, and thus subsection of District of Columbia long-arm statute allowing personal jurisdiction over person transacting business in District of Columbia authorized personal jurisdiction over executive in action alleging company violated Fair Housing Act; company's connections with District of Columbia could be attributed to company president, who was alleged to have personally developed and implemented discriminatory lending policies challenged in action. *NovaStar Financial, Inc. v. NovaStar Financial, Inc.*, 2009, 631 F.Supp.2d 1. Federal Courts ⇨ 1037

Virginia restaurant transacted business in District of Columbia, and thus was subject to personal jurisdiction in District in former employees' action alleging wage payment and overtime violations, even though restaurant's advertising in District did not give rise to employees' claims, where restaurant's main bank account was located in District, restaurant's owner and managers made frequent trips to deposit funds in bank located in District, and, at some point during dates cited in complaint, employees were required to cash pay checks drawing on same or associated accounts held at that bank. *Ventura v. BEBO Foods, Inc.*, 2009, 595 F.Supp.2d 77. Federal Courts ⇨ 1037

Restaurant owner transacted business in District of Columbia, and thus was subject to personal jurisdiction in District in former employees' action alleging wage payment and overtime violations, where owner operated restaurant and offered cooking classes in District during relevant period. *Ventura v. BEBO Foods, Inc.*, 2009, 595 F.Supp.2d 77. Federal Courts ⇨ 1037

A failure to allege that the defendants physically conducted business within the District of Columbia is not alone fatal to jurisdiction under the District's long-arm statute. *Doe I v. State of Israel*, 2005, 400 F.Supp.2d 86. Federal Courts ⇨ 1037

Federal district court in District of Columbia did not have personal jurisdiction under District of Columbia long-arm statute over Director of Virginia Department of Corrections (VDOC), Warden of state prison, and individuals or entities employed by VDOC, in §§ 1983 lawsuit brought by prisoner of District of Columbia who was subject to prisoner custody arrangement with Virginia and who alleged that he was subject to variety of constitutional deprivations, since Virginia defendants did not live in District of Columbia, they did not transact business in District, and all acts alleged by prisoner to connect defendants to forum related to actions taken in their official capacities. *Ibrahim v. District of Columbia*, 2004, 357 F.Supp.2d 187, opinion after remand from court of appeals 498 F.Supp.2d 149. Federal Courts ⇨ 1037

Federal inmate's former attorney was not subject to personal jurisdiction in District of Columbia in inmate's civil rights suit, where attorney was based in Missouri, attorney did not reside in or have office in District, none of tortious acts alleged by inmate occurred in District, and inmate did not suffer injury as result of attorney's actions that occurred in District. *Robinson v. Ashcroft*, 2004, 357 F.Supp.2d 142. Federal Courts ⇨ 1037

General personal jurisdiction did not exist over Swedish national telephone company in federal district court sitting in District of Columbia, in consultancy firm's action for damages, return of property, and cease and desist order arising from Swedish corporation's alleged takeover of consultancy firm's Swedish operations, when telephone company was not domiciled in, organized under laws of, or maintaining principal place of business in District of Columbia, telephone company did not have continuing corporate presence in District of Columbia directed at advancing its corporate directives, and had no real property there, did not contract to insure or to supply services there, did not have marital or parent-and-child relationship there, and caused no injury there by either local or foreign act or omission. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 86

Trial court lacked personal jurisdiction over former condominium building owner pursuant to forum's long-arm statute in action by condominium unit owner arising from alleged fraudulent sales of Maryland building as part of bankruptcy proceedings, where building owner was a Maryland resident, did not own any D.C. property, and worked for a Maryland corporation that he owned, and owner's limited business dealing in D.C. had nothing to do with actions giving rise to litigation. *Kissi v. Hardesty*, 2010, 3 A.3d 1125. Federal Courts ⇨ 1051

Trial court lacked personal jurisdiction over former condominium building owner pursuant to forum's long-arm statute in action by condominium

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unit owner arising from alleged fraudulent sales of Maryland building as part of bankruptcy proceedings, where building owner was a Maryland resident, did not own any D.C. property, and worked for a Maryland corporation that he owned, and owner's limited business dealing in D.C. had nothing to do with actions giving rise to litigation. *Kissi v. Hardesty*, 2010, 3 A.3d 1125. Federal Courts ⇨ 1051

Superior court had personal jurisdiction over non-resident corporations in patient's negligence action under "transacting business in the District of Columbia" provision of long-arm statute, where corporations provided a wide range of health care services within the District of Columbia on regular and on-going basis, and patient's claim related to and had a discernible relationship with corporations' business. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

23. — Contracts as contacts, transacting business

Former employee's allegation that employer had offices in District of Columbia did not establish that District of Columbia had personal jurisdiction over employer under District of Columbia's long-arm statute; employee identified no business transaction or service contract in District of Columbia, he identified no act which caused tortious injury in District of Columbia, and employee presented no office address for employer in District of Columbia or facts establishing that the offices regularly did business in District of Columbia. *Atwal v. Lawrence Livermore Nat. Sec., LLC*, 2011, 786 F.Supp.2d 323. Federal Courts ⇨ 1037

Swedish law firm, its managing partner, and "of counsel" attorney "transacted business" in District of Columbia, as was required for exercise of personal jurisdiction over firm and its attorneys in action brought against them by Swedish scientist and corporation, of which he was managing director and sole shareholder, for claims arising from their improper representation in numerous patent infringement actions; firm and its attorneys had regular communications into District of Columbia in regard to scientist's representation, business meetings were conducted in District, firm contracted with law firm in District of Columbia to assist with representation of scientist and his corporation, contract was ultimately performed in District by filing patent infringement lawsuit, and thus firm's contractual activities had effect in District. *Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 2011, 786 F.Supp.2d 240. Federal Courts ⇨ 1037

Contacts that municipal housing authority in Louisiana had with District of Columbia, of meeting with federal officials in Washington, D.C. and receiving federal funding, were uniquely governmental activities, and thus they were insufficient under due process clause to establish personal jurisdiction due to application of "government contacts" exception to District of Columbia long-arm statute in action against housing authority, seeking damages for breach of contract, unjust enrichment,

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and negligent administration of contract from housing authority. *Fuentes-Fernandez & Company, PSC v. Caballero & Castellanos, PL*, 2011, 770 F.Supp.2d 277. Constitutional Law ⇨ 3965(11); Federal Courts ⇨ 1037

Subcontractor's alleged breach of subcontract did not subject it to personal jurisdiction in District of Columbia under provisions of District of Columbia's long-arm statute allowing for jurisdiction over defendants transacting business in District of Columbia and contracting to supply services in District of Columbia, given absence of evidence that subcontractor solicited business relationship or that contract, which specifically indicated that subcontractor would perform work at its offices in California, called for performance of work within District of Columbia. *KnowledgePlex, Inc. v. Metonymy, Inc.*, 2008, 574 F.Supp.2d 164. Federal Courts ⇨ 1037

Individual who signed employment agreement on company's behalf to employ plaintiff as manager of its non-existent subsidiary transacted business in District of Columbia, and thus was subject to personal jurisdiction under District of Columbia long-arm statute, where plaintiff was required under contract to provide services in District. *Gillespie v. Capitol Reprographics, LLC*, 2008, 573 F.Supp.2d 80. Federal Courts ⇨ 1037

Florida accounting firm was not subject to personal jurisdiction in the District of Columbia under the "transacted business" provision of the District's long-arm statute in investors' securities fraud action arising from statements it made in audited financial statements prepared for Florida corporation; there was no contractual relationship between the accounting firm and the investors, and the firm's contacts with the District of Columbia, including its communications with a director of the corporation and its distribution of financial statements to investors, were not focused on soliciting business or performing a business transaction. *Burman v. Phoenix Worldwide Industries, Inc.*, 2006, 437 F.Supp.2d 142. Federal Courts ⇨ 1037

Even if girlfriend, a citizen of the Russian Federation, entered into agreement with boyfriend in the District of Columbia to assist him in purchasing an apartment in Moscow, Russia, no substantial connection existed between agreement and District of Columbia, so as to permit exercise of personal jurisdiction over girlfriend under "transacting business" provision of District of Columbia long-arm statute in boyfriend's breach of contract action; negotiations for apartment purchase began when parties were in Russia, contract was to be performed in Russia, and alleged breach occurred in Russia. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App.D.C. 178. Federal Courts ⇨ 1037

"Transacting business" provision of the District of Columbia long-arm statute permits exercise of personal jurisdiction when non-resident defendant's contractual activities cause repercussions in the District; it is sufficient if suit is based on contract that has "substantial connection" with the

District. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App.D.C. 178. Federal Courts ⇨ 1037

Federal district court sitting in District of Columbia did not have personal jurisdiction over nonresident natural gas pipeline operator, under District of Columbia long-arm statute conferring jurisdiction when business was transacted, based on claim that illegal scheme to improperly allocate gas during periods of shortage was furthered by involvement with District of Columbia energy utility; agreements in question were negotiated and were to be performed outside of District. *Atlantigas Corp. v. Nisource, Inc.*, 2003, 290 F.Supp.2d 34, appeal dismissed 2003 WL 22971974. Federal Courts ⇨ 1037

District Court did not have personal jurisdiction, pursuant to District of Columbia's long-arm statute, over federal government contractor with respect to claim by contractor's employee that contractor failed to provide him per diem payments when he performed work in Germany, inasmuch as employee's claims did not have significant connection to contractor's contract to perform aerospace services for federal government, and due process concerns existed based on facts that events giving rise to claims did not occur in District, government contract was executed in Texas, and division responsible for former employee's employment had its corporate offices in Texas. *Gowens v. Dyncorp*, 2001, 132 F.Supp.2d 38. Federal Courts ⇨ 1037

24. — Communications as contacts, transacting business

Even if German corporation issued press releases discussing its United States franchisee's restaurants in the District of Columbia, it did not "transact business" in the District, so as to support exercise of specific personal jurisdiction under District of Columbia's long-arm statute in copyright infringement action, where the corporation did not actively advertise in the District of Columbia, either on its website or through local newspapers, and the press releases did not specifically target District of Columbia residents as opposed to potential customers located elsewhere in the United States and around the world. *Rundquist v. Vapiano SE*, 2011, 798 F.Supp.2d 102. Federal Courts ⇨ 1037

German corporation did not transact business in the District of Columbia through its interactive website, which allegedly allowed customers to place meal orders with restaurants it franchised, including those in District of Columbia, so as to support exercise of specific personal jurisdiction under District of Columbia's long-arm statute in copyright infringement action, where website gave users "click-through" access to website of its United States franchisee, and meal ordering functionality for restaurants based in the United States appeared to be on that website. *Rundquist v. Vapiano SE*, 2011, 798 F.Supp.2d 102. Federal Courts ⇨ 1037

Italian manufacturer's phone calls and emails to distributor's employees in District of Columbia did not constitute acts in District, for purposes of long-arm statute provision conferring personal jurisdiction for tortious injuries caused by "act or omission in the District of Columbia," even if alleged injury arising from manufacturer's allegedly tortious interference with distributor's contracts with its employees occurred in District, where calls and emails originated from Italy. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 2010, 753 F.Supp.2d 141. Federal Courts ⇨ 1037

Federal district court in District of Columbia did not have specific personal jurisdiction over non-residents under District of Columbia long-arm statute on basis of libelous email that had been sent to plaintiff serviceman's commanding officer, where plaintiff did not allege that defendants had rendered services or derived revenue from goods used or consumed in District and plaintiff did not allege that defendants themselves had regularly conducted or solicited business in District and defendants did not create "persistent course of conduct" through occasional travel to District or by telephone calls to District, regardless of calls' frequency or nature. *McIntosh v. Gilley*, 2010, 753 F.Supp.2d 46. Federal Courts ⇨ 1037

Federal district court in District of Columbia did not have specific personal jurisdiction over non-residents under District of Columbia long-arm statute on basis of libelous email that had been sent to plaintiff serviceman's commanding officer, where complaint did not allege, inter alia, that defendant non-residents had created and sent that email at issue and plaintiff did not explain how he knew that email had been sent from District and he did not support that assertion in an affidavit and defendants disavowed that allegation by affidavit. *McIntosh v. Gilley*, 2010, 753 F.Supp.2d 46. Federal Courts ⇨ 1037

District Court for District of Columbia lacked personal jurisdiction over non-resident for-profit corporation that assisted medical students in obtaining medical residency positions, pursuant to provision of District of Columbia's long-arm statute allowing specific personal jurisdiction over defendants who transacted business in District, in action brought by non-profit corporation that conducted annual program to match students with residency program, alleging conspiracy to defraud, civil conspiracy, tortious interference, and trade secret misappropriation; claims did not arise from for-profit's alleged conduct of providing services to residents of District and sending faxes and e-mails to District residency programs, and for-profit's alleged conduct of having its owner enter into form contract to access non-profit's online information did not amount to transacting business in District. *National Resident Matching Program v. Electronic Residency LLC*, 2010, 720 F.Supp.2d 92. Federal Courts ⇨ 1037

Telephone calls placed by agent of defendant corporation into District of Columbia from elsewhere did not constitute "transacting business" in the District of Columbia under District of Colum-

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bia subsection of long-arm statute that governed personal jurisdiction based upon conduct of agent, and thus court could not assert specific personal jurisdiction over corporation based on such contacts alone. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1037

In action brought by consumers against officers and employees of defunct advertising company, stemming from receipt of unwanted facsimile transmissions, district court lacked personal jurisdiction over non-resident employee under District of Columbia long-arm statute; although employee allegedly facilitated company's operation, was fully aware that company was sending unsolicited faxes, and knew that company database contained phone numbers with District of Columbia area code, such contacts did not constitute purposeful availment of forum. *Kopf v. Battaglia*, 2006, 425 F.Supp.2d 76. Federal Courts ⇨ 1041

Three telephone calls and mailings which non-resident broker made to nonresident seller's attorney in the District of Columbia in order to secure payment it believed due under the brokerage agreement pertaining to sale of New Jersey television station did not constitute "transacting business" within meaning of District of Columbia long-arm statute; furthermore, broker's unilateral actions of employing counsel in the District of Columbia could not confer personal jurisdiction on broker. *Brunson v. Kalil & Co., Inc.*, 2005, 404 F.Supp.2d 221. Federal Courts ⇨ 1037

Telephone call patient made to doctor, who practiced outside the District of Columbia, could not serve as a basis for jurisdiction over doctor under the long-arm statute and remain consistent with the limits of due process. *Etchebarne-Bourdin v. Radice*, 2009, 982 A.2d 752, certiorari denied 131 S.Ct. 264, 178 L.Ed.2d 140. Constitutional Law ⇨ 3965(5); Federal Courts ⇨ 1051

If corporation that operated movie theater in Virginia engaged in advertising that reached into the District of Columbia (D.C.), it had fair warning that it could be sued in the home jurisdiction of the customers it courted, such that exercise of personal jurisdiction by D.C. court over that nonresident corporation in negligence action by patron who was allegedly injured at theater would be permissible under Due Process Clause and long-arm statute. *Jackson v. Loews Washington Cinemas, Inc.*, 2008, 944 A.2d 1088. Federal Courts ⇨ 1051

Corporate operator of movie theater in Virginia, where injuries giving rise to negligence action allegedly occurred, did not transact business within District of Columbia (D.C.), as necessary for exercise of personal jurisdiction over nonresident operator, based on placement by operator's parent corporation of advertisements in D.C. newspaper that showed movies playing at theaters including that one. *Jackson v. Loews Washington Cinemas, Inc.*, 2008, 944 A.2d 1088. Federal Courts ⇨ 1051

Contract language that required Mexican elevator repair company to submit to federal jurisdiction

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tion in the District for disputes that arose under repair contract with the American Embassy in Mexico did not justify an assertion of personal jurisdiction over company by the local courts in embassy employee's personal injury action. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Courts ⇨ 13.5(4)

24.5. — Contacts within scope of employment, transaction business

Website operator, who alleged that scandalous book regarding President of United States contained false and defamatory statements about him and his website, failed to make prima facie showing that nonresident writer of book's foreword regularly did or solicited business in District of Columbia, engaged in any other persistent course of conduct in District, or derived substantial revenue from goods used or consumed, or services rendered, in District, as required to establish personal jurisdiction over writer under District's long-arm statute in action alleging libel, false light invasion/misappropriation of privacy, and business disparagement. *Parisi v. Sinclair*, 2011, 806 F.Supp.2d 93, appeal dismissed 2012 WL 1450059. Federal Courts ⇨ 1037

Former employees failed to allege sufficient facts demonstrating that their claims against corporation and its co-owners for unpaid wages under Fair Labor Standards Act (FLSA) arose from corporation's business transactions or contracts in District of Columbia as required by District's long-arm statute or that corporation maintained continuous and significant contacts with District as required for exercise of personal jurisdiction over corporation in comportment with Due Process, and venue was thus improper in District on the basis that corporation and co-owners all resided in Virginia and that corporation was also resident of District. *Shay v. Sight & Sound Systems, Inc.*, 2009, 668 F.Supp.2d 80. Constitutional Law ⇨ 3965(3); Constitutional Law ⇨ 3965(10); Federal Courts ⇨ 1041

Nonresident federal officials working in various facilities for Bureau of Prisons (BOP), headquartered in District of Columbia, were not subject to personal jurisdiction, under District of Columbia's long-arm statute, in former prisoner's suit claiming constitutional violations related to his medical treatment, since employment with BOP did not constitute transacting business with BOP headquarters, and prisoner's alleged injury occurred while he was incarcerated in North Carolina. *Scinto v. Federal Bureau of Prisons*, 2009, 608 F.Supp.2d 4, affirmed 352 Fed.Appx. 448, 2009 WL 4250126, certiorari denied 130 S.Ct. 2417, 176 L.Ed.2d 934. Federal Courts ⇨ 1037

Limited contacts that non-resident company executives had with District of Columbia were not "separate from and in addition to" employee's allegedly unlawful termination, and thus tortious injury subsection of District of Columbia long-arm statute did not authorize personal jurisdiction over executives in former employee's discrimination action against employer and executives alleging vio-

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lation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. *D'Onofrio v. SFX Sports Group, Inc.*, 2008, 534 F.Supp.2d 86. Federal Courts ⇨ 1037

Contacts of non-resident company executives with District of Columbia were in the course of employment, rather than based on personal contacts, and thus subsection of District of Columbia long-arm statute allowing personal jurisdiction over person transacting business in District did not authorize personal jurisdiction over executives in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. *D'Onofrio v. SFX Sports Group, Inc.*, 2008, 534 F.Supp.2d 86. Federal Courts ⇨ 1037

25. — Negotiations as contacts, transacting business

When nonresident defendant has solicited business relationship and contract calls for performance of work within District of Columbia, court may find that transaction has such a substantial connection with District of Columbia that the exercise of personal jurisdiction is permissible under District of Columbia's long-arm statute, and relevant considerations include prior negotiations and contemplated future consequences, along with terms of contract and parties' actual course of dealings. *KnowledgePlex, Inc. v. Metonymy, Inc.*, 2008, 574 F.Supp.2d 164. Federal Courts ⇨ 1037

27. — Connection with injury, transacting business

Business that nonresident employer was "transacting" in District of Columbia did not relate to discharged employee's employment discrimination claims, within meaning of state's specific jurisdiction long-arm statute, in action alleging retaliation and wrongful termination, since employee had been hired solely to work on contract for services in State of Virginia, and alleged discriminatory conduct had all taken place in Virginia. *McDaniel v. FEDITC LLC*, 2011, 825 F.Supp.2d 157. Federal Courts ⇨ 1037

Non-resident members of Broadcasting Board of Governors transacted business in District of Columbia, and business had strong nexus to contractor's claims against Board members, because members' alleged involvement in decision to terminate contract formed basis for retaliation and discrimination claims, and thus court had personal jurisdiction over members. *Navab-Safavi v. Broadcasting Bd. of Governors*, 2009, 650 F.Supp.2d 40, affirmed 637 F.3d 311, 394 U.S.App.D.C. 377. Federal Courts ⇨ 1037

Because a court in the District of Columbia may exercise specific jurisdiction over a non-resident defendant only for a claim for relief arising from the specific acts enumerated in the long-arm statute, a plaintiff's jurisdictional allegations must arise from the same conduct of which it complains; the claim itself must have arisen from the business transacted in the District of Columbia or there is

no jurisdiction. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1041

Sending of letter by New York hospital where physician trained to Department of Health and Human Services did not subject hospital to jurisdiction of courts in the District of Columbia, pursuant to District of Columbia long-arm statute, in action brought by physician after her medical license was suspended. *Baltierra v. West Va Bd. of Medicine*, 2003, 253 F.Supp.2d 9. Federal Courts ⇨ 1037

Nexus requirement of District of Columbia long-arm statute operates as a due process check on reach or scope of the "transacting business" provision of long-arm statute. U.S.C.A. Const.Amends. 5, 14; D.C.Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Constitutional Law ⇨ 3965(3); Federal Courts ⇨ 1051

28. Contracts to supply services—In general

Texas state and county officials were not subject to specific personal jurisdiction in District of Columbia in action alleging that they violated plaintiff's constitutional rights during divorce and child support proceedings, even though officials had obtained social security and tax identification numbers, and had entered into contracts with federal agencies to provide services in Texas, where plaintiff's claim for relief was unrelated to alleged business of obtaining social security and tax identification numbers, officials did not provide any service in District of Columbia, and plaintiff's alleged injuries all occurred in Texas. *Pease v. Burke*, 2008, 535 F.Supp.2d 150. Federal Courts ⇨ 1041

29. — Attorneys, contracts to supply services

Florida client was not subject to personal jurisdiction District of Columbia in law firm's breach of contract action, even though client entered into retainer agreement to have firm represent it in dispute with Food and Drug Administration (FDA), even though attorneys in District worked on matter, where firm was Ohio partnership, retainer agreement was on firm letterhead bearing Georgia address, client did not come to District to meet with District lawyers without lawyer from Georgia office, and Georgia lawyer expanded team into District by calling upon attorneys he selected to "assist" him on matter. *Thompson Hine LLP v. Smoking Everywhere Inc.*, 2012, 2012 WL 32337. Federal Courts ⇨ 1037

Florida client was not subject to personal jurisdiction in District of Columbia in law firm's breach of contract action, even though client hired lawyers from firm's office in District and contemplated that work would be performed in District, where subject matter of engagement was Oregon proceeding, client provided no evidence of any meetings in District or telephone conversations with lawyers in District concerning Oregon engagement after contract was signed, and engagement lasted less than

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one year. *Thompson Hine LLP v. Smoking Everywhere Inc.*, 2012, 2012 WL 32337. Federal Courts ⇨ 1037

Attorney who had represented landlord during tenant's eviction from Texas apartment was not subject to jurisdiction, under District of Columbia long-arm statute, for tenant's suit asserting claims under ADA, Rehabilitation Act, Fair Housing Act (FHA), and §§ 1983, since attorney had never transacted any business or contracted to supply services in D.C., contracted to insure or act as surety for anyone or any agreement located, executed, or to be performed in D.C., held interest in, used, or possessed real property in D.C., or had marital or parent and child relationship in D.C., and tenant's alleged injuries occurred solely in Texas. *Buesgens v. Brown*, 2008, 567 F.Supp.2d 26. Federal Courts ⇨ 1037

29.5. Qui tam actions

There was personal jurisdiction, in District of Columbia, consistent with due process, in suit by representative of construction company against son of company's principal, claiming tortious interference with prospective contract arrangement under which representative would have served as exclusive case manager in qui tam action against company; son's alleged direct negotiations with Department of Justice (DOJ), taking place in District and interfering with proposed representation arrangement, were sufficient to give son notice that he might be haled into court in District. *Elemery v. Philipp Holzmann A.G.*, 2008, 533 F.Supp.2d 116. Constitutional Law ⇨ 3965(1); Federal Courts ⇨ 1037

There was personal jurisdiction, under District of Columbia long arm statute, in suit by representative of construction company against son of company's principal, claiming tortious interference with prospective contract arrangement under which representative would have served as exclusive case manager in qui tam action; representative alleged that son committed tortious act within District by undertaking direct negotiations with Department of Justice (DOJ), and that representative suffered loss of prospective fees as result of son's conduct. *Elemery v. Philipp Holzmann A.G.*, 2008, 533 F.Supp.2d 116. Federal Courts ⇨ 1037

30. Torts within District

Exercise of personal jurisdiction over federal prison warden, who was non-resident, in her individual capacity under District of Columbia's long-arm statute, in prisoner's action under §§ 1983 and Administrative Procedure Act, was not appropriate; warden did not transact any business or contracts to supply services in District, warden did not cause any tortious injury in District, prisoner, who was incarcerated in another state, suffered no injury in District, and warden could not have reasonably anticipated being haled into court in District. *Ballard v. Holinka*, 2009, 601 F.Supp.2d 110. Federal Courts ⇨ 1037

Absent showing that girlfriend, a citizen of Russian Federation, did or solicited business, engaged in any other persistent course of conduct, or de-

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rived substantial revenue from goods used or consumed, or services rendered, in the District of Columbia, provision of District of Columbia long-arm statute, granting personal jurisdiction over nonresident defendant who causes tortious injury in the District of Columbia by an act or omission outside the District of Columbia, did not apply to support exercise of personal jurisdiction in District over girlfriend in connection with ex-boyfriend's fraud claims. *Helmer v. Doletskaya*, 2003, 290 F.Supp.2d 61, affirmed in part, reversed in part 393 F.3d 201, 364 U.S.App.D.C. 178. Federal Courts ⇨ 1037

31. Torts outside District—In general

In order to exercise jurisdiction over a non-resident defendant pursuant to tortious injury subsection of District of Columbia long-arm statute, the defendant must have caused tortious injury within the District and one of the "plus factors" in that subsection must also be present. *D'Onofrio v. SFX Sports Group, Inc.*, 2008, 534 F.Supp.2d 86. Federal Courts ⇨ 1037

32. — Establishing jurisdiction, torts outside district

Contract between Singaporean private-security corporation headquartered in Dubai and government contractor which also had a contract with United States Agency for International Development (USAID) provided insufficient connection to forum to establish specific jurisdiction over corporation under District of Columbia long-arm statute in actions brought by estate and survivor of Iraqi citizens alleging that corporation's personnel shot and killed citizens in Iraq; although USAID was based in District of Columbia, contract between corporation and contractor was executed in Dubai, corporation's contacts with contractor occurred in North Carolina, and subcontractor clause in contractor's contract with USAID which was allegedly binding on corporation was too tenuous a connection on which to establish a jurisdictional basis. *Estate of Manook v. Research Triangle Institute, International and Unity Resources Group, L.L.C.*, 2010, 693 F.Supp.2d 4. Federal Courts ⇨ 1037

Examining whether a product has been placed in the stream of commerce may be appropriate when determining whether a court may exercise personal jurisdiction over a defendant pursuant to the "transacting any business" provision of the District of Columbia long-arm statute, which is coextensive with the Due Process Clause; however, it is irrelevant in determining whether a defendant is subject to personal jurisdiction under the "tortious injury" provision, which requires that both act and injury occur in the District of Columbia. *Burman v. Phoenix Worldwide Industries, Inc.*, 2006, 437 F.Supp.2d 142. Federal Courts ⇨ 1037

Attorney who represented inmate's co-defendant in criminal prosecution was not subject to personal jurisdiction in District of Columbia in inmate's civil rights action, where attorney was based in Missouri, attorney did not reside in or have office in District, none of alleged tortious acts occurred in District, and inmate did not allege that tortious

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injury resulted from any actions of attorney that occurred in District. *Robinson v. Ashcroft*, 2004, 357 F.Supp.2d 146. Federal Courts ⇨ 1041

Medical school graduates who brought suit alleging that system for assigning medical students to medical residency programs violated the Sherman Act failed to establish personal jurisdiction under the "tortious injury" prong of District of Columbia long-arm statute over entities responsible for system, based on allegation that they lost "the right to negotiate with employers in the District of Columbia for placement as resident physicians" as a result of the alleged anticompetitive activity, absent allegation that any named plaintiff pursued or would have pursued a resident position within the District of Columbia. *Jung v. Association of American Medical Colleges*, 2004, 300 F.Supp.2d 119. Federal Courts ⇨ 1041

Superior Court had personal jurisdiction under long-arm statute over doctors, who practiced outside of the District of Columbia, to consider patient's claims of medical malpractice for injury suffered in the District as a result of an allegedly tortious act or omission outside the District; no nexus between doctors' persistent course of conduct in the District based on their participation in continued education meetings and the tortious act was required in order for court to exercise personal jurisdiction pursuant to long-arm statute. *Etchebarne-Bourdin v. Radice*, 2009, 982 A.2d 752, certiorari denied 131 S.Ct. 264, 178 L.Ed.2d 140. Federal Courts ⇨ 1051

33. — Injury within District, torts outside district

District Court for District of Columbia lacked personal jurisdiction over non-resident for-profit corporation that assisted medical students in obtaining medical residency positions, pursuant to provision of District of Columbia's long-arm statute allowing specific personal jurisdiction over defendants who caused tortious injury in the District, in action brought by non-profit corporation that conducted annual program to match students with residency program, alleging conspiracy to defraud, civil conspiracy, tortious interference, and trade secret misappropriation; non-profit failed to identify any tortious injury inflicted on it by for-profit in the District of Columbia. *National Resident Matching Program v. Electronic Residency LLC*, 2010, 720 F.Supp.2d 92. Federal Courts ⇨ 1037

Former federal prisoner, who was denied placement in a halfway house while he was incarcerated in Minnesota, did not suffer injury in District of Columbia, as required to support exercise of personal jurisdiction over his former case manager in the District under the "causing tortious injury" provision of the District's long-arm statute. *Walton v. Federal Bureau of Prisons*, 2008, 533 F.Supp.2d 107. Federal Courts ⇨ 1041

Complaint by Palestinian residents of West Bank against Israeli officials, in connection with development of settlements, failed to allege facts that would support personal jurisdiction under tortious injury provision of District of Columbia long-

arm statute, in that no Palestinian who suffered harm on American soil claimed to reside in District or to have suffered harm there, and, even if proper inquiry focused on United States generally, complaint did not allege persistent course of conduct in United States. *Doe I v. State of Israel*, 2005, 400 F.Supp.2d 86. Federal Courts ⇨ 1037

To invoke "tortious injury" prong of District of Columbia long-arm statute, plaintiffs must show that the moving defendants either directly or through an agent caused tortious injury to plaintiffs in the District of Columbia by an act or omission in the District of Columbia. *Jung v. Association of American Medical Colleges*, 2004, 300 F.Supp.2d 119. Federal Courts ⇨ 1041

34. — Doing business, torts outside district

National cable television company and local cable television company providing and supporting national cable company's services did not have a unity of ownership interest as would establish that one was an alter ego of the other, as would allow federal court in District of Columbia to assert personal jurisdiction over local cable company, which provided service to subscriber in Maryland, in subscriber's action against cable companies and credit agencies for violation of Fair Debt Collection Practices Act and Fair Credit Reporting Act; although the companies shared 33 officers including the same president, vice president, treasurer, and secretary, and provided related services, neither company owned any part of the other, they did not share staff, property, or a business purpose, each had separate budgets and separate funds, and neither entity co-mingled funds or assets with the other, or diverted the other entity's funds for its own use. *Tall v. Comcast of Potomac, LLC*, 2010, 729 F.Supp.2d 342, affirmed 439 Fed. Appx. 1, 2011 WL 4915156. Corporations And Business Organizations ⇨ 1078(3); Federal Courts ⇨ 1037

Florida accounting firm's performance of accounting services for seven clients who resided in the District of Columbia did not subject it to personal jurisdiction in the District under the District's long-arm statute in federal securities fraud action; services provided to the clients arose out of the firm's presence in Florida, rather than as result of any regular business relationships or persistent course of conduct in the District. *Burman v. Phoenix Worldwide Industries, Inc.*, 2006, 437 F.Supp.2d 142. Federal Courts ⇨ 1037

35. — Solicitation of business, torts outside district

Under District of Columbia law, Italian manufacturer's direct solicitation of sales in United States did not amount to tortious interference with distributor's business relationships, where manufacturer's actions either breached parties' contract, or involved entities with which distributor had not established relationships. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 2010, 753 F.Supp.2d 141. Torts ⇨ 241

Italian manufacturer regularly did and solicited business in District of Columbia through its whol-

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ly-owned subsidiary and alter ego, and thus was subject to specific personal jurisdiction in District in distributor's action alleging that manufacturer tortiously interfered with its business by attempting to hire its employees and directly soliciting sales from its business opportunities, even if subsidiary was not active during relevant time period, where manufacturer registered subsidiary in District in order to conduct business in District, and alleged injuries occurred in District. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 2010, 753 F.Supp.2d 141. Federal Courts ⇨ 1037

District of Columbia resident, who alleged that he suffered serious ailments from anthrax inoculations he received while in military, did not transact business with Michigan vaccine manufacturer to obtain vaccine for personal use, and thus, federal court located in District of Columbia did not have specific jurisdiction, pursuant to transacting business prong of District's long-arm statute, over manufacturer in citizen's products liability action; manufacturer's advertisements did not solicit residents of District to purchase vaccine or otherwise transact business with manufacturer, and all of its advertisements emphasized government's limited allocation of anthrax vaccines to first responders. *Savage v. Biopart, Inc.*, 2006, 460 F.Supp.2d 55. Federal Courts ⇨ 1041

Florida accounting firm's 1,326 telephone calls to the District of Columbia did not constitute a persistent course of conduct in the District of Columbia for purposes of exercising personal jurisdiction over the firm under the District's long-arm statute, absent evidence that the telephone calls were related to doing or soliciting business in the District. *Burman v. Phoenix Worldwide Industries, Inc.*, 2006, 437 F.Supp.2d 142. Federal Courts ⇨ 1037

Nonresident grocery corporation's extensive advertising in major circulation District of Columbia newspaper, designed to target and attract District residents to nearby out-of-District stores, constituted "transacting any business" under District long-arm statute. D.C.Code 1981, § 13-423(a)(1). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Courts ⇨ 13.4(3)

District of Columbia courts had personal jurisdiction over foreign corporation which extensively advertised its grocery stores in District's major circulation newspaper and other communications media, in a slip and fall case in which patron, a District resident, alleged that she suffered personal injuries in one of corporation's Maryland stores located near District's borders; corporation, through its extensive advertising activity in a major District newspaper, purposefully solicited District residents as customers for its nearby Maryland and Virginia stores and thus transacted business in District, and because patron's claim had a discernible relationship to corporation's advertising, corporation could have reasonably anticipated being haled into court to defend against a personal injury suit brought by a District resident. U.S.C.A. Const.Amend. 5, 14; D.C.Code 1981, § 13-423(a)(1), (b). *Shoppers Food Ware-*

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house v. Moreno, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Courts ⇨ 13.5(4)

38. — Connection with injury, torts outside district

Even if Bahamian bank and its Swiss parent stole \$14 million from purported account holder and bank's manager engaged in physical altercation with account holder's daughter, a Nevada citizen who allegedly possessed rights to purported account, these acts did not cause an injury in the District of Columbia, as required for District of Columbia to assert specific jurisdiction over banks and manager under District of Columbia's long-arm statute in daughter's lawsuit alleging she possessed rights to the alleged account. *Day v. Cornèr Bank (Overseas) Ltd.*, 2011, 789 F.Supp.2d 150. Federal Courts ⇨ 1037

Federal district court sitting in District of Columbia did not have specific personal jurisdiction over Swedish national telephone company in consultancy firm's action for damages, return of property, and cease and desist order arising from Swedish corporation's alleged takeover of consultancy firm's Swedish operations, even if telephone company did transact business in District of Columbia, given that all actions alleged to have caused injury to consultancy firm and its shareholders occurred elsewhere, neither plaintiffs nor defendants resided in District of Columbia, no action was taken in District of Columbia to harm firm or shareholders, and no consequences of alleged actions were shown to have had impact in District of Columbia. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 86

Personal jurisdiction over New Jersey defendants was lacking under District of Columbia's long-arm statute; alleged assaults of the plaintiff in New Jersey lacked any connection with District of Columbia forum. *Hilksa v. Jones*, 2003, 267 F.Supp.2d 100. Federal Courts ⇨ 1037

Assuming that Mexican elevator repair company transacted business in the District within the meaning of the long-arm statute so that it could reasonably have foreseen being haled into court in the District, there was not a substantial connection between the company's contacts with the forum and American Embassy employee's claim for relief, where the company's alleged contacts were limited to the occasional sale of parts to another company that used them in buildings in the District, but employee's claim was based on personal injuries she sustained in Mexico as the result of an elevator accident at the embassy. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Courts ⇨ 13.5(4)

To satisfy nexus requirement of District of Columbia long-arm statute, resident patron's slip-and-fall claim against nonresident grocery corporation based on slip in Maryland store near District of Columbia's borders had to have been related to or substantially connected with corporation's advertising activity in District, that is, it had to have

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had some discernible relationship to corporation's advertising activity. U.S.C.A. Const.Amends. 5, 14; D.C.Code 1981, § 13-423(b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Courts ⇨ 13.5(4)

Resident patron's slip-and-fall claim against non-resident grocery corporation based on slip in Maryland store near District of Columbia's borders had some discernible relationship to corporation's extensive advertising activity in major circulation District newspaper, and thus, nexus requirement of District long-arm statute was satisfied. U.S.C.A. Const.Amends. 5, 14; D.C.Code 1981, § 13-423(b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Courts ⇨ 13.5(4)

39. — Due process, torts outside district

District of Columbia's long-arm statute relating to causing tortious injury in the District by conduct outside the District is given an expansive interpretation that is coextensive with the due process clause. *Copeland-Jackson v. Oslin*, 2008, 555 F.Supp.2d 213. Federal Courts ⇨ 1037

40. — Minimum contacts, torts outside district

Actual injuries of which federal inmate complained in his civil rights action occurred in Oklahoma, Kansas, and Colorado, and not in District of Columbia, and therefore district court lacked personal jurisdiction over non-resident defendants pursuant to provisions of District of Columbia's long-arm statute providing for jurisdiction over non-resident defendant who caused tortious injury in District of Columbia by act or omission committed in District of Columbia or outside District of Columbia. *Akers v. Watts*, 2010, 740 F.Supp.2d 83. Federal Courts ⇨ 1037

District court did not have jurisdiction under the District of Columbia long-arm statute over probation officers who allegedly violated federal prisoner's rights under the Privacy Act, where officers worked and resided in Mississippi, and none of the alleged acts or omissions by the probation officers took place in the District of Columbia or had any effect in the District of Columbia. *Morris v. U.S. Probation Services*, 2010, 723 F.Supp.2d 225. Federal Courts ⇨ 1037

Under District of Columbia law, former law student's claims of fraud about anonymous grading systems and law school exams accrued, and three-year statute of limitations began to run, while student was enrolled at law schools; student had knowledge of the alleged fraud before graduation. *Richards v. Duke University*, 2007, 480 F.Supp.2d 222. Limitation Of Actions ⇨ 100(1)

Florida accounting firm was not subject to personal jurisdiction in the District of Columbia under the "tortious injury" provision of the District's long-arm statute in investors' securities fraud action arising from statements it made in audited financial statements prepared for Florida corporation; financial statements were prepared by ac-

counting firm in Florida, and its telephone calls to a corporate director in the District did not amount to an act or omission there. *Burman v. Phoenix Worldwide Industries, Inc.*, 2006, 437 F.Supp.2d 142. Federal Courts ⇨ 1037

Mexican elevator repair company could not have anticipated being haled into court in the District as required to assert personal jurisdiction under the long-arm statute as a result of entering into a contract with the American Embassy in Mexico for elevator repair work that was done entirely in Mexico, especially considering that the plaintiff was not a party to the contract, but was only an embassy employee. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Courts ⇨ 13.4(3)

41. Real property interests

Court could exercise personal jurisdiction over a non-resident defendant trust company that had no contacts with the District of Columbia other than taking assignment of a mortgage note secured by real property in the District where the note and rights to the property were the sources of controversy in the case; trust's claim to ownership of a security interest in mortgagor's property was a contact with the forum sufficient to subject the trust to personal jurisdiction without offending due process standards. *Johnson v. Long Beach Mortg. Loan Trust 2001-4*, 2006, 451 F.Supp.2d 16. Federal Courts ⇨ 76.5

45. Agents, generally

Issue of whether District Court had personal jurisdiction over corporation, under District of Columbia's long-arm statute, could not be resolved at motion to dismiss stage of lobbyist's breach of contract action against corporation and others, because of factual dispute as to whether limited liability company (LLC) acted as an agent for corporation when it entered into the contract with lobbyist. *Plesha v. Ferguson*, 2011, 760 F.Supp.2d 90. Federal Courts ⇨ 1041

46. Conspiracy

Since the bare allegation of conspiracy or agency is insufficient to establish personal jurisdiction under the District of Columbia long-arm statute, a plaintiff asserting personal jurisdiction under a conspiracy theory must allege specific acts connecting the defendant with the forum. *Second Amendment Foundation v. U.S. Conference of Mayors*, C.A.D.C.2001, 274 F.3d 521, 348 U.S.App. D.C. 238. Federal Courts ⇨ 1051

Buyer of company that produced test to screen for Methicillin Resistant *Staphylococcus aureus* bacteria (MRSA) failed to plead conspiracy between selling shareholders and attorney with particularity, as required to establish conspiracy jurisdiction under District of Columbia's long-arm statute; beyond alleging that attorney represented selling shareholders, there were no facts or fair inferences from facts to support element of an agreement between parties to participate in an unlawful act. *3M Co. v. Boulter*, 2012, 2012 WL 386488. Federal Courts ⇨ 1042

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Individuals allegedly exposed to fungicide used on bananas at plantations in Ecuador could not establish conspiracy jurisdiction under District of Columbia's long-arm statute based on either organization's alleged participation in a conspiracy with related companies or its alleged agency relationship with these companies, where the court had dismissed all of the individuals' claims against these companies. *Orellana v. CropLife Intern.*, 2010, 740 F.Supp.2d 33. Federal Courts ⇨ 1037

District Court for the District of Columbia (D.C.) could not exercise personal jurisdiction pursuant to the conspiracy theory of jurisdiction over nonresident United States ferrosilicon producers in Brazilian ferrosilicon producers' suit alleging that United States producers submitted fraudulent petition to the International Trade Commission (ITC) that sought imposition of import tariffs on foreign producers, even if United States producers were co-conspirators of a ferrosilicon producer organization that did business in D.C., absent any overt act by the organization in D.C. in furtherance of the conspiracy. *Companhia Brasileira Carbureto de Calcio-CBCC v. Applied Industrial Materials Corp.*, 2010, 698 F.Supp.2d 109, question certified 640 F.3d 369, 395 U.S.App.D.C. 106, certified question answered 35 A.3d 1127, answer to certified question conformed to 2012 WL 555650. Federal Courts ⇨ 1037

Bare allegations of civil conspiracy between foreign private-security corporation and government contractor which had substantial contacts within District of Columbia were insufficient to establish conspiracy jurisdiction in District of Columbia district court, in action brought by survivor of Iraqi citizen alleging that corporation's personnel shot and killed citizen in Iraq. *Estate of Manook v. Research Triangle Institute, International and Unity Resources Group, L.L.C.*, 2010, 693 F.Supp.2d 4. Federal Courts ⇨ 1041

Bare allegations of civil conspiracy between foreign private-security corporation and government contractor which had substantial contacts within District of Columbia were insufficient to establish conspiracy jurisdiction in District of Columbia district court, in action brought by survivor of Iraqi citizen alleging that corporation's personnel shot and killed citizen in Iraq. *Estate of Manook v. Research Triangle Institute, International and Unity Resources Group, L.L.C.*, 2010, 693 F.Supp.2d 4. Federal Courts ⇨ 1041

So long as any one co-conspirator commits at least one overt act in the forum jurisdiction sufficient to establish long-arm jurisdiction over that person and the act committed is in furtherance of the conspiracy, there is personal jurisdiction over all members of the conspiracy under the District of Columbia subsection of the long-arm statute that governs personal jurisdiction based upon conduct of an agent. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1037

In order to attribute the acts of one co-conspirator to another for jurisdictional purposes under the

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District of Columbia subsection of the long-arm statute that governs personal jurisdiction based upon conduct of an agent, plaintiffs must adequately allege: (1) the existence of a civil conspiracy, (2) the defendant's participation in the conspiracy, and (3) an overt act by a co-conspirator within the forum, subject to the long-arm statute, and in furtherance of the conspiracy. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1041

Conspiracy jurisdiction under the District of Columbia subsection of the long-arm statute that governs personal jurisdiction based upon conduct of an agent assumes that persons who enter the forum and engage in conspiratorial acts are deemed to transact business there directly; co-conspirators who never enter the forum are deemed to transact business there by an agent. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1037

Under District of Columbia law, to establish personal jurisdiction on the basis of a theory of conspiracy jurisdiction, courts require a prima facie showing of (1) a conspiracy, (2) in which the defendant participated, and (3) a co-conspirator's overt act within the forum, subject to the long-arm statute and in furtherance of the conspiracy. *Youming Jin v. Ministry of State Sec.*, 2004, 335 F.Supp.2d 72. Federal Courts ⇨ 1037

Under District of Columbia long-arm statute, courts have jurisdiction over a defendant on the basis of the acts of his co-conspirator; the defendant's co-conspirator is deemed to be his agent. *Youming Jin v. Ministry of State Sec.*, 2004, 335 F.Supp.2d 72. Federal Courts ⇨ 1037

Under "conspiracy" theory of long-arm jurisdiction, district court had personal jurisdiction over non-resident sponsors of medical residency programs pursuant to the "transacting business" prong of District of Columbia long-arm statute, based on evidence that resident sponsors of such programs committed overt acts in the District of Columbia in furtherance of antitrust conspiracy to prevent competition in the hiring and compensation of resident physicians. *Jung v. Association of American Medical Colleges*, 2004, 300 F.Supp.2d 119. Federal Courts ⇨ 1041

Under "conspiracy" theory of District of Columbia long-arm jurisdiction, acts undertaken within the forum by one co-conspirator in furtherance of an alleged conspiracy may subject a non-resident co-conspirator to personal jurisdiction under the long-arm statute. *Jung v. Association of American Medical Colleges*, 2004, 300 F.Supp.2d 119. Federal Courts ⇨ 1041

United States failed to make prima facie showing that British tobacco company had conspired with its subsidiaries, who committed acts in District of Columbia, or that company had engaged in a civil conspiracy or pattern of racketeering activity with other tobacco companies, as would establish prima facie case of jurisdiction over company

under District of Columbia long-arm statute, based on conspiracy theory of jurisdiction, sufficient to withstand motion to dismiss in action in which United States sought to recover health care expenses incurred in treating patients for smoking-related illnesses, and to disgorge profits under Racketeer Influenced and Corrupt Organizations Act (RICO). *U.S. v. Philip Morris Inc.*, 2000, 116 F.Supp.2d 116. Federal Civil Procedure ⇨ 1742(2); Federal Courts ⇨ 86

Under District of Columbia law, "conspiracy theory of jurisdiction" provides that where a court has personal jurisdiction over the co-conspirator of a non-resident defendant, due to overt acts committed by the co-conspirator in the forum in furtherance of the conspiracy, the co-conspirator is deemed the non-resident defendant's "agent" for purposes of the long-arm statute. *U.S. v. Philip Morris Inc.*, 2000, 116 F.Supp.2d 116. Federal Courts ⇨ 1051

Conspiracy jurisdiction did not exist in district court of District of Columbia when only overt act alleged with particularity was meeting that allegedly took place between coconspirators at Kazakhstan embassy and purported victim of conspiracy did not explain how meeting, which took place after crucial incidents had occurred, was used to plan conspiracy. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Federal Courts ⇨ 1037

51. — Copyright, intellectual property

Copyright owner was not entitled to jurisdictional discovery to learn true identities, addresses, and telephone numbers of unidentified participants in filesharing swarm, in action alleging participants violated Copyright Act by illegally downloading, uploading, and distributing owner's copyrighted movie over Internet, absent showing that participants from whom jurisdictional discovery was sought resided in District of Columbia within meaning of District's long-arm statute. *People Pictures, LLC v. Group of Participants in Filesharing Swarm Identified by Hash: 43F4CFD05C115EE5887F680B0-CA73B1BA18B434A*, 2011, 2011 WL 6758462. Copyrights and Intellectual Property ⇨ 84

52. — Trademark, intellectual property

Alleged injury to trademark owner and licensee did not occur in the District of Columbia (D.C.), and thus D.C. district court could not exercise specific personal jurisdiction over Egyptian private equity firm in owner and licensee's trademark infringement suit under the section of the D.C. long-arm statute authorizing courts to exercise jurisdiction over any person who caused tortious injury in D.C. by an act or omission in D.C., even if firm used infringing name and logo to advertise and promote its services at global private equity conference in D.C., absent allegations that firm sold its services at the conference or that owner and licensee did a substantial part of their business

in D.C. *Citadel Inv. Group, L.L.C. v. Citadel Capital Co.*, 2010, 699 F.Supp.2d 303. Trademarks ⇨ 1559

Under District of Columbia law, allegation that customer's resident employees gave non-resident competitor's employees access to plaintiff's trade secrets was sufficient to establish personal jurisdiction over competitor, in action for conspiracy to misappropriate trade secrets, even if trade secrets were actually retrieved by competitor from customer's out-of-state computer servers. *DSMC, Inc. v. Convera Corp.*, 2002, 273 F.Supp.2d 14, stay denied 2002 WL 31741498, appeal dismissed 349 F.3d 679, 358 U.S.App.D.C. 356. Federal Courts ⇨ 1037

53. Federal entities—In general

District court lacked personal jurisdiction over individual Internal Revenue Service (IRS) employees, because plaintiff failed to allege requisite contacts between these California and Texas residents and District of Columbia under Constitution and District's long-arm statute. *D.C. Code 1981, § 13-423. Gardner v. U.S.*, C.A.D.C.2000, 213 F.3d 735, 341 U.S.App.D.C. 378, certiorari denied 121 S.Ct. 1099, 531 U.S. 1153, 148 L.Ed.2d 971. Federal Courts ⇨ 1037

United States District Court in District of Columbia could not assert personal jurisdiction under District of Columbia long-arm statute over employees of Internal Revenue Service (IRS) who were Arizona residents on basis of presence of headquarters of IRS in District of Columbia, in *Bivens* action alleging various causes of action under Fifth Amendment and federal statutes, where only contact that employees had with District of Columbia was their employment with IRS. *Cornell v. Kellner*, 2008, 539 F.Supp.2d 311. Federal Courts ⇨ 1041

State prosecutors had prosecutorial immunity from federal court suit alleging violation of claimant's due process and equal protection rights through conduct of prosecutions exhibiting "judicial racism." *Moore v. Motz*, 2006, 437 F.Supp.2d 88. Civil Rights ⇨ 1376(9)

State court judges had judicial immunity from federal court suit, alleging that they violated due process and equal protection rights of claimant through actions taken in their official capacities. *Moore v. Motz*, 2006, 437 F.Supp.2d 88. Civil Rights ⇨ 1376(8)

Federal district court sitting in District of Columbia lacked personal jurisdiction over state court judges, court officials, and prosecutors, in suit claiming violation of due process and equal protection rights. *Moore v. Motz*, 2006, 437 F.Supp.2d 88. Federal Courts ⇨ 1037

Federal district court sitting in District of Columbia did not have personal jurisdiction, under long-arm statute, over federal judges, court officials, and prosecutors living in adjacent state, in suit claiming violation of due process and equal protection rights. *Moore v. Motz*, 2006, 437 F.Supp.2d 88. Federal Courts ⇨ 1037

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Prosecutorial immunity barred claim that attorneys in Justice Department failed to prosecute due process and equal protection violation claims brought by claimant. *Moore v. Motz*, 2006, 437 F.Supp.2d 88. Civil Rights ⇨ 1376(9)

Federal court officers, as well as judges, had absolute judicial immunity from suit claiming they violated due process and equal protection rights of claimant by displaying "judicial racism" in their handling of claimant's civil rights complaints. *Moore v. Motz*, 2006, 437 F.Supp.2d 88. Civil Rights ⇨ 1376(8)

Fact that Internal Revenue Service (IRS) special agent was employed by the Treasury Department, which was headquartered in District of Columbia, did not provide basis for any exercise of personal jurisdiction over agent in the District Court for the District of Columbia. *Islamic American Relief Agency v. Unidentified FBI Agents*, 2005, 394 F.Supp.2d 34, affirmed in part and remanded 477 F.3d 728, 375 U.S.App.D.C. 93, certiorari denied 128 S.Ct. 92, 552 U.S. 816, 169 L.Ed.2d 20. Federal Courts ⇨ 1037

54. — Prison officials, federal entities

Federal officials who lived and/or worked in District of Columbia were subject to district court's exercise of personal jurisdiction, pursuant to District of Columbia long-arm statute, for purposes of detainee's action alleging five-month jail overdetention; complaint averred that tortious acts at issue were committed while officials were physically in forum. *Wormley v. U.S.*, 2009, 601 F.Supp.2d 27. Federal Courts ⇨ 1037

Court lacked personal jurisdiction, under District of Columbia's long-arm statute, over warden and other staff of Bureau of Prisons (BOP) corrections facility in North Carolina who were sued in their individual capacities for allegedly violating prisoner's constitutional rights; although BOP headquarters was located in the District of Columbia, none of the defendants resided in the District of Columbia, owned real property in the District of Columbia, or maintained a place of business in the District of Columbia, and prisoner's alleged injuries occurred in North Carolina. *Banks v. Lappin*, 2008, 539 F.Supp.2d 228. Federal Courts ⇨ 1041

District court sitting in District of Columbia had no personal jurisdiction in federal prisoner's civil rights action over federal officers whose alleged tortious actions occurred in Pennsylvania and who did not appear to have other contacts with District of Columbia. *Ibrahim v. District of Columbia*, 2008, 539 F.Supp.2d 143. Federal Courts ⇨ 1041

Mere fact that defendants were employees of Bureau of Prisons, the headquarters office of which was in the District of Columbia, did not render them subject to suit in their individual capacities in the District of Columbia. *Thornberry v. Federal Bureau of Prisons*, 2008, 535 F.Supp.2d 154. Federal Courts ⇨ 1037

Former case manager's status as an employee of the Bureau of Prisons (BOP), which was headquartered in the District of Columbia, did not subject her to suit in her individual capacity in the District

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under the "transacts business" provision of the District's long-arm statute in action brought by former federal prisoner. *Walton v. Federal Bureau of Prisons*, 2008, 533 F.Supp.2d 107. Federal Courts ⇨ 1041

Mere fact that prison officials were employees of Federal Bureau of Prisons, which was headquartered in District of Columbia, did not render them subject to suit in their individual capacities in District of Columbia under long-arm statute. *Metcalf v. Federal Bureau of Prisons*, 2008, 530 F.Supp.2d 131. Federal Courts ⇨ 1037

Under District of Columbia's long-arm statute, district court lacked personal jurisdiction over federal prison officials in action brought by prisoner incarcerated in Southern District of Indiana, alleging that defendants denied him meaningful access to the courts and violated his due process rights by denying him access to publications pertaining to firearms; with exception of two defendants, the director of and chief trust fund manager for Federal Bureau of Prisons, defendants did not live in District of Columbia, nor was prisoner injured there. *Metcalf v. Federal Bureau of Prisons*, 2008, 530 F.Supp.2d 131. Federal Courts ⇨ 1037

District court lacked jurisdiction under the District of Columbia long-arm statute over personal capacity claims asserted against prison officials by an inmate seeking damages in connection with a Pennsylvania prison disciplinary proceeding; the mere fact that the officials were employees of the Federal Bureau of Prisons (BOP), the headquarters office of which was in the District, did not render them subject to suit in their individual capacities in the courts of the District of Columbia, and the complaint alleged no facts to establish that the inmate suffered any injury in the District, rather than in Pennsylvania. *Simpson v. Federal Bureau of Prisons*, 2007, 496 F.Supp.2d 187. Federal Courts ⇨ 1041

District court had personal jurisdiction over United States Parole Commission officers sued by District of Columbia prisoner denied reparole under new federal guidelines, pursuant to District of Columbia long-arm statute; commission supervised district prisoners and parolees, parole violation warrants were often requested from parole officers working in district, and arrested parole violators were often incarcerated at district jail to await revocation hearings. *Fletcher v. District of Columbia*, 2007, 481 F.Supp.2d 156, opinion vacated in part on denial of reconsideration 550 F.Supp.2d 30. Federal Courts ⇨ 1037

Wardens of federal prisons in Virginia and West Virginia were not subject to personal jurisdiction in District of Columbia in former inmate's *Bivens* action seeking damages arising from his allegedly illegal detention in prisons, even if Bureau of Prisons (BOP) was headquartered in District, where inmate was never incarcerated in District, and wardens were not located in District, and committed no acts in District. *Zakiya v. U.S.*, 2003, 267 F.Supp.2d 47. Federal Courts ⇨ 1037

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District of Columbia was not proper venue for former federal prisoner's action under Federal Tort Claims Act (FTCA) alleging that agents of Federal Bureau of Prisons (BOP) violated his constitutional rights by keeping him imprisoned three years beyond his judicially imposed sentence based upon his refusal to sign installment schedule agreement for unpaid fines, even if policy upon which agents based their decision to detain prisoner was formulated in District, where implementation of policy to continue incarceration took place in Virginia, West Virginia, and Pennsylvania. *Zakiya v. U.S.*, 2003, 267 F.Supp.2d 47. Federal Courts ⇨ 1041

55.5. State entities

Federal district court sitting in District of Columbia lacked personal jurisdiction over State of Maryland, in suit alleging deprivation of due process and equal protection rights of claimant; states were not "persons" under District's long-arm statute, and in any event State had not taken any action within District subjecting it to jurisdiction. *Moore v. Motz*, 2006, 437 F.Supp.2d 88. Federal Courts ⇨ 1037

55.7. Municipal entities

No claim upon which relief could be granted was stated when claimant sued city mayor and council president for failing to fulfill campaign promise that they would work to curb racially-based harassment by city police officers. *Moore v. Motz*, 2006, 437 F.Supp.2d 88. Municipal Corporations ⇨ 170

57. Exceptions—In general

Where a nonresident defendant who purposefully has directed its activities at forum residents seeks to defeat personal jurisdiction, it must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. U.S.C.A. Const.Amends. 5, 14; D.C.Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 2000, 746 A.2d 320, certiorari denied 120 S.Ct. 2737, 530 U.S. 1270, 147 L.Ed.2d 997. Courts ⇨ 13.3(4)

58. — News gathering, exceptions

Under the so-called "newsgathering exception," the collection of news in the District of Columbia for dissemination elsewhere does not constitute "business" or a "persistent course of conduct" for the purposes of assessing jurisdiction under subsection of the District of Columbia long-arm statute giving rise to personal jurisdiction for tortious injury caused by act or omission outside the District when the defendant engages in business or any other persistent course of conduct in the District. *Lewy v. Southern Poverty Law Center, Inc.*, 2010, 723 F.Supp.2d 116. Federal Courts ⇨ 1037

59. — Government contacts, exceptions

Fact that Commonwealth of Virginia had contracts with the District of Columbia regarding D.C. inmates housed there, made reports to the District concerning those inmates, and received money from the District for keeping the inmates did not

allow D.C. court to exercise, under transacting business provision of D.C. long-arm statute, personal jurisdiction over Virginia officials in their individual capacities in suit by D.C. inmate transferred to Virginia prison and then back again. *Ali v. District of Columbia*, C.A.D.C.2002, 278 F.3d 1, 349 U.S.App.D.C. 327, rehearing en banc denied. Federal Courts ⇨ 1037

District Court for the District of Columbia (D.C.) could not exercise specific personal jurisdiction over nonresident United States ferrosilicon producers in suit brought by Brazilian ferrosilicon producers based on the United States producers' alleged inducement of the unions representing their employees to join an allegedly fraudulent International Trade Commission (ITC) petition and their payment of the unions' legal fees, even if the government contacts doctrine did not prohibit exercising personal jurisdiction on the basis of participation in ITC proceedings, absent evidence that the alleged inducing or payment of fees occurred in the District. *Companhia Brasileira Carbureto de Calcio-CBCC v. Applied Industrial Materials Corp.*, 2010, 698 F.Supp.2d 109, question certified 640 F.3d 369, 395 U.S.App.D.C. 106, certified question answered 35 A.3d 1127, answer to certified question conformed to 2012 WL 555650. Federal Courts ⇨ 1037

Michigan anthrax vaccine manufacturer's contracts with Department of Defense, which presumably supplied the vaccine administered to District of Columbia resident while he was in the military, were insufficient to establish that federal court located in District of Columbia had jurisdiction over manufacturer in resident's products liability action; manufacturer's contract negotiations occurred outside the District, government contacts principle established that entry into District by nonresidents for purpose of contacting federal governmental agencies could not serve as basis for personal jurisdiction, and the contracts were not the alleged source of resident's injury. *Savage v. Biopart, Inc.*, 2006, 460 F.Supp.2d 55. Federal Courts ⇨ 1041

Pursuant to government contacts exception, any meetings held by New York corporation in District of Columbia with federal officials and its signing of bi-lateral agreement on uranium could not be considered in determining whether corporation had sufficient contacts with District of Columbia to permit district court to exercise personal jurisdiction over it. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Federal Courts ⇨ 1037

The government contacts exception excludes from consideration in personal jurisdiction analysis defendant's contacts with federal instrumentalities. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Federal Courts ⇨ 1037

Government contacts exception to personal jurisdiction analysis did not apply to preclude consideration of New York corporation's alleged meetings at Republic of Kazakhstan embassy in determining whether corporation's contacts with District of Columbia supported exercise of personal jurisdiction over it. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Federal Courts ⇨ 1037

New York corporation's membership in a trade organization qualified as "government contact" that could not be considered, pursuant to government contacts exception, in determining whether personal jurisdiction could be exercised over corporation in District of Columbia. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Federal Courts ⇨ 1037

Unsupported allegations that a nonresident defendant has fraudulently induced unwarranted government action against the plaintiff will not be sufficient to invoke the fraud exception to the government contacts doctrine, pursuant to which entry into the District of Columbia by nonresidents for the purposes of contacting federal government agencies is not a basis for the assertion of in personam jurisdiction; rather, only those allegations that meet the requirements for pleading fraud under pleading rule for fraud claims or its federal counterpart will be sufficient to confer personal jurisdiction in the District. *Companhia Brasileira Carbureto De Calcio v. Applied Indus. Materials Corp.*, 2012, 35 A.3d 1127, answer to certified question conformed to 2012 WL 555650. Federal Courts ⇨ 1051; Federal Courts ⇨ 1054

60. Corporations—In general

Website maintained by former members of church corporation was not interactive with users in District of Columbia, and thus website was not persistent course of conduct in D.C., as required for federal district court to have personal jurisdiction over former member or former members' new organization. *Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell*, 2008, 578 F.Supp.2d 164. Federal Courts ⇨ 1037

Under District of Columbia's long-arm statute, a court does not have jurisdiction over individual officers and employees of a corporation just because the court has jurisdiction over the corporation; rather, personal jurisdiction over the employees or officers of a corporation in their individual capacities must be based on their personal contacts with the forum and not their acts and contacts carried out solely in a corporate capacity. *Bailey v. J & B Trucking Services, Inc.*, 2008, 577 F.Supp.2d 116. Federal Courts ⇨ 1037

Federal district court sitting in District of Columbia did not have specific personal jurisdiction over Peruvian catering corporation, in suit by com-

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petitor alleging wrongful interference with competitor's catering for Peruvian mine workers; claim that corporation was alter ego of its parent was precluded by finding of no jurisdiction over parent, and corporation had no contacts whatsoever with District. *AGS Intern. Services S.A. v. Newmont USA Ltd.*, 2004, 346 F.Supp.2d 64. Federal Courts ⇨ 86

Parent corporation's own activities in District of Columbia were not sufficient to subject it to personal jurisdiction in District in United States' action against it for violations of Hart-Scott-Rodino Antitrust Improvements Act, even though it filed tax form with District because one of its employees was District resident, where corporation did not have officers or any persons employed in District, was not registered to do business in District, did not own, lease, or maintain any facilities or other property in District, did not have post office box, telephone, or facsimile number, and did not have bank or other financial account in District. *U.S. v. Smithfield Foods, Inc.*, 2004, 332 F.Supp.2d 55. Antitrust And Trade Regulation ⇨ 969

Ordinarily, a defendant corporation's contacts with a forum may not be attributed to affiliated corporations, for the purpose of establishing personal jurisdiction over affiliated corporations. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Federal Courts ⇨ 82

Whether one corporation is the alter ego of another, for purposes of establishing personal jurisdiction over one when the district court has jurisdiction over the other, is a question of law to be decided by the district court. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Federal Courts ⇨ 97

Mauritian company was not subject to personal jurisdiction in District of Columbia in action seeking damages arising out of relocation of Chagos natives to Mauritius, even though company was affiliated with international accounting firm, company was represented in District by American company, and company was party to contract to recruit civilian employees for United States naval base in Chagos islands; claims did not arise out of company's actions in District, company's affiliation was with Swiss branch of accounting firm, agreement with American representative focused on consulting services for procurement of World Bank projects in Africa, recruitment contract was performed exclusively in Mauritius and was regulated by Mauritian law, and company did no advertising in United States, had no United States contacts, and supplied no services in United States. *Bancoult v. McNamara*, 2003, 214 F.R.D. 5. Federal Courts ⇨ 86

60.5. — Minimum contacts, corporations

Mortgagee's president was not protected under fiduciary shield doctrine, on grounds that he was more than employee of mortgagee, as required for exercise of personal jurisdiction, comporting with due process requirements and District of Columbia long-arm statute, over nonresident president

based not only on his personal contacts with forum but also his contacts carried out solely in corporate capacity, and thus, amendment was warranted to add president as defendant in Fair Housing Act suit alleging that mortgagee discriminated against Native Americans, people with disabilities, and African Americans, where president exerted significant influence over mortgagee's policies, procedures, and operations. *National Community Reinvestment Coalition v. NovaStar Financial, Inc.*, 2009, 604 F.Supp.2d 26. Constitutional Law ⇨ 3965(10); Federal Courts ⇨ 1037

German financial company's purported contacts with the District of Columbia did not give rise to union pension fund trustees' claim that company breached fiduciary duties to the fund under ERISA by failing to disclose the change in an acquired company's key portfolio manager's role toward the fund, as would have been adequate to exercise personal jurisdiction over German company under long-arm statute and consistent with the strictures of the Due Process Clause, notwithstanding German company's concern about identifying and retaining key personnel in acquired company following the acquisition, where there was no evidence that these discussions ever referred to individual employee in question, or that German company even knew who the employee was. *Heller v. Nicholas Applegate Capital Management, LLC*, 2007, 498 F.Supp.2d 100. Constitutional Law ⇨ 3965(7); Federal Courts ⇨ 1037

German financial company's participation in jointly crafted communications strategy, including the drafting of master question and answer documents regarding its acquisition of union pension fund trustees' California based investment manager, did not constitute minimum contacts with District of Columbia adequate to exercise personal jurisdiction over the company under the District's long-arm statute and consistent with the strictures of the Due Process Clause, where California based company was responsible for all letters informing its major clients of its acquisition, there was otherwise no evidence that German company was aware that the documents it drafted would be included in the form letters sent within the District of Columbia, and sending of the letters represented the unilateral activity of a third party or a third person. *Heller v. Nicholas Applegate Capital Management, LLC*, 2007, 498 F.Supp.2d 100. Constitutional Law ⇨ 3965(7); Federal Courts ⇨ 1037

German financial company's negotiations to purchase California based investment manager, which acted as a sub-advisor on union pension fund trustee's international investments, did not constitute minimum contacts with District of Columbia adequate to exercise personal jurisdiction over the company under the District's long-arm statute and consistent with the strictures of the Due Process Clause, absent evidence that the negotiations were in any way related to the District of Columbia or that investment manager's relationship with District of Columbia company responsible for managing trustee's assets was a factor in the acquisition. *Heller v. Nicholas Applegate Capital Management,*

LLC, 2007, 498 F.Supp.2d 100. Constitutional Law ⇨ 3965(7); Federal Courts ⇨ 1037

61. — Subsidiaries, corporations

Under District of Columbia law, Italian parent demonstrated active and substantial control over its American subsidiary, such that entities had unity of interest and control, and thus subsidiary's contacts with District were attributable to parent for purposes of establishing personal jurisdiction over it, where subsidiary was wholly-owned by parent, parent represented to potential clients that subsidiary was its United States branch, companies used identical logos and trademarks, companies shared website content, parent's managing director was subsidiary's president and sole director, subsidiary did not maintain separate bank account, and parent paid subsidiary's expenses. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 2010, 753 F.Supp.2d 141. Corporations And Business Organizations ⇨ 1078(3); Federal Courts ⇨ 82; Federal Courts ⇨ 86; Federal Courts ⇨ 1037

Federal district court sitting in District of Columbia did not have specific personal jurisdiction, under District long-arm statute, over French catering corporation, in suit brought by competitor alleging that subsidiary wrongfully interfered with its business in Peru; corporation maintain no physical presence in District, and dealings within District were all conducted by independent subsidiaries. *AGS Intern. Services S.A. v. Newmont USA Ltd.*, 2004, 346 F.Supp.2d 64. Federal Courts ⇨ 86

Parent corporation that was charged with violating Hart-Scott-Rodino Antitrust Improvements Act as result of its investment subsidiary's acquisition of voting securities in competitor was not subject to personal jurisdiction in District of Columbia as result of other subsidiaries' sales to stores in District, where other subsidiaries were not involved in alleged violations, and investment subsidiary did not transact business in District. *U.S. v. Smithfield Foods, Inc.*, 2004, 332 F.Supp.2d 55. Antitrust And Trade Regulation ⇨ 969

Mere ownership of stock in subsidiary is insufficient to establish that parent corporation exercises sufficient control over subsidiary to warrant exercise of personal jurisdiction over parent in antitrust action based on subsidiary's activities in district. *U.S. v. Smithfield Foods, Inc.*, 2004, 332 F.Supp.2d 55. Antitrust And Trade Regulation ⇨ 969

To determine whether parent corporation controls its subsidiaries, and thus is subject to personal jurisdiction in district in antitrust suit based on subsidiaries' activities, court looks to totality of relationship between parent and its subsidiaries, including whether parent has capacity to influence subsidiaries' major business decisions, whether parent and subsidiaries have same officers and directors, whether parent and subsidiaries maintain separate books and accounts, whether integrated sales system exists between parent and subsidiaries, and whether parent and subsidiaries

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present common marketing image. *U.S. v. Smithfield Foods, Inc.*, 2004, 332 F.Supp.2d 55. Antitrust And Trade Regulation ⇨ 969

When parent and its subsidiary are joined as defendants in antitrust action, court may exercise jurisdiction over parent based on activities of subsidiary within district if relationship between parent and subsidiary is such that subsidiary may be considered agent or alter ego of parent. *U.S. v. Smithfield Foods, Inc.*, 2004, 332 F.Supp.2d 55. Antitrust And Trade Regulation ⇨ 969

Federal district court sitting in District of Columbia did not have personal jurisdiction over nonresident natural gas pipeline operator, under District of Columbia long-arm statute conferring jurisdiction when business was transacted, based on activities of its marketing subsidiary in District; activities of subsidiary were ordinarily not attributable to parent for jurisdictional purposes, and parent was not alter ego of subsidiary, as required for exception to general non-attribution rule. *Atlantigas Corp. v. Nisource, Inc.*, 2003, 290 F.Supp.2d 34, appeal dismissed 2003 WL 22971974. Federal Courts ⇨ 1037

That wholly-owned subsidiary of Swedish national telephone company laid cable in Washington, D.C., was insufficient to establish personal jurisdiction over telephone company in federal district court sitting in District of Columbia, in consultancy firm's action for damages, return of property, and cease and desist order arising from Swedish corporation's alleged takeover of consultancy firm's Swedish operations, under theory that subsidiary's commercial activity could be imputed to telephone company, inasmuch as telephone company's sworn affidavits established that there were no shared officers or directors between it and subsidiary, that financial records and account books were maintained separately, and that telephone company had no role in subsidiary's day-to-day operations or corporate governance, so as to allow piercing of the corporate veil; mere corporate relationship between telephone company and subsidiary, without more, was insufficient to connect telephone company to District of Columbia. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 82; Federal Courts ⇨ 86

Jurisdictional facts alleged in complaint alleging antitrust conspiracy involving manufacture and sale of sodium monochloroacetate (SMCA) and monochloroacetic acid (MCAA) were not sufficiently specific to establish specific jurisdiction over French corporation under District of Columbia long-arm statute; allegations were that subsidiaries engaged in MCAA antitrust conspiracy involving MCAA sold in United States, that one or more of conspirators resided, transacted business, were found, or had agents in district, and that substantial part of events giving rise to plaintiff's claims occurred and substantial portion of affected interstate trade and commerce had been carried out in District of Columbia. *Diamond Chemical Co., Inc. v. Atofina Chemicals, Inc.*, 2003, 268 F.Supp.2d 1. Antitrust And Trade Regulation ⇨ 969

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Ultimately, in determining whether personal jurisdiction exists over parent corporation in forum court when it exists over subsidiary corporation, the question is whether the parent corporation so dominated the subsidiary corporation as to negate its separate personality, making the exercise of jurisdiction over the absent parent fair and equitable. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Federal Courts ⇨ 82

To determine whether a parent corporation is a separate corporate entity distinct from its subsidiary, over which district court has personal jurisdiction, or merely the alter ego of the subsidiary, for purposes of deciding existence of personal jurisdiction over parent corporation, the district court must evaluate: (1) whether there is such a unity of interest and ownership that the separate corporate personalities of parent corporation and subsidiary effectively no longer exist, and (2) whether an inequitable result would follow if the district court treats subsidiary's allegedly wrongful acts as those of subsidiary alone and not also those of parent corporation. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Federal Courts ⇨ 82

Unity of interest between parent corporation and subsidiary is established, for purposes of determining if subsidiary is alter ego of parent corporation, in analyzing existence of personal jurisdiction over parent corporation when it exists over subsidiary, if parent corporation had active and substantial control over subsidiary at the time of the alleged wrongful acts that form basis of lawsuit, but this control does not have to amount to actual day-to-day control or supervision. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Corporations And Business Organizations ⇨ 1078(3)

Existence of unity of interest and ownership blurred any distinction between employer's parent corporation and subsidiary, so that District Court could exercise personal jurisdiction over parent corporation, in employee's racial discrimination action against both parent corporation and subsidiary, when District Court had personal jurisdiction over subsidiary; parent and subsidiary shared at least three key common officers and directors, none of the shared officers and directors maintained separate phone or facsimile line for their dual roles, one executive employee was transferred from parent to subsidiary, employee of parent made hiring and firing decisions for subsidiary, parent headquarters maintained nearly all records for subsidiary employee, and parent and subsidiary maintained joint payroll and accounting systems. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Federal Courts ⇨ 82

Significant control by parent corporation of corporate operator of movie theater in Virginia where injuries giving rise to negligence action allegedly occurred was insufficient, by itself, to pierce the corporate veil for the purpose of establishing personal jurisdiction of District of Columbia (D.C.)

court over nonresident operator under long-arm statute; there was no evidence of fraud in the creation of layered corporate structure, and there was no injustice in respecting that structure, since plaintiff could have either sued parent corporation in District of Columbia or sued operator in Virginia. *Jackson v. Loews Washington Cinemas, Inc.*, 2008, 944 A.2d 1088. Federal Courts ⇨ 1051

Significant sharing of operations in the legal, advertising, and maintenance/repair departments of parent corporation and corporate operator of movie theater outside District of Columbia where injuries giving rise to negligence action allegedly occurred established unity of ownership and interest between the corporations, as one requirement for piercing the corporate veil in order to establish long-arm jurisdiction over nonresident operator. *Jackson v. Loews Washington Cinemas, Inc.*, 2008, 944 A.2d 1088. Federal Courts ⇨ 1051

Mexican elevator repair company was not the alter ego of American elevator company that did business in the District, and thus, trial court was not authorized to pierce the corporate veil in order to assert personal jurisdiction over Mexican company, even though the Mexican company was formerly owned by American company and pursuant to a stock purchase agreement the Mexican company continued to use American company's name and logo, supplied American company with elevator parts, and continued to use consultants from American company, where the two companies did not share any employees, managers, officers, office equipment, or office space, the two companies had separate bank accounts, and the Mexican company held its own corporate meetings and paid its own taxes. *Gonzalez v. Internacional De Elevadores, S.A.*, 2006, 891 A.2d 227. Corporations And Business Organizations ⇨ 1078(3)

Trial court confronted by both a motion to dismiss for lack of personal jurisdiction and a motion for summary judgment was required to determine whether there was personal jurisdiction over corporate defendant before granting summary judgment to defendant on the merits in action alleging that lead paint exclusion in a general liability insurance policy issued by a wholly-owned subsidiary of defendant was void as against public policy; public policy issue, which was apparently one of first impression, should not have been addressed first where there was doubt about the court's jurisdiction to decide the matter, defendant did not clearly waive jurisdictional argument, and there was a question as to whether plaintiff sued the proper party in suing defendant, rather than defendant's subsidiary. *Hawkins v. W.R. Berkley Corp.*, 2005, 889 A.2d 290, on remand 2007 WL 6334083. Federal Courts ⇨ 1051; Federal Courts ⇨ 1055

62. — Agents, corporations

Lending corporation's general manager was not "more than an employee," and thus corporate shield doctrine was applicable to bar district court's personal jurisdiction, under transacting any business provision of District of Columbia's long-

arm statute, over general manager in action brought by personal guarantor of loan seeking injunctive and declaratory relief regarding whether he was released from guaranty to pay loan, even though general manager had central position with corporation, absent any allegation that general manager possessed decision-making authority surrounding alleged release of guaranty. *Farouki v. Petra Intern. Banking Corp.*, 2011, 811 F.Supp.2d 388. Federal Courts ⇨ 1037

Acquired company was not transacting business as an agent for acquiring German company, as would have indicated purposeful availment so as to be adequate to exercise personal jurisdiction over German company under long-arm statute and consistent with the strictures of the Due Process Clause, even though German company provided acquired company's professional client a template for a letter to union pension fund trustees announcing the acquisition, where acquired company remained operationally autonomous, and German company did not exercise control over acquired company's day-to-day operations. *Heller v. Nicholas Applegate Capital Management, LLC*, 2007, 498 F.Supp.2d 100. Constitutional Law ⇨ 3965(3); Federal Courts ⇨ 1037

Small number of mailings and two phone calls made by agent of non-party foreign corporation into District of Columbia from elsewhere would not have been sufficient for federal district court to exercise specific personal jurisdiction over that foreign corporation, under District of Columbia subsection of long-arm statute that governed personal jurisdiction based upon conduct of agent, if it had been made defendant to lawsuit; thus, court could not assert conspiracy jurisdiction over other foreign corporation that was defendant to lawsuit but over which court did not have general or specific personal jurisdiction. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1037

Court could not exercise conspiracy personal jurisdiction over foreign corporation, as alleged co-conspirator, that had been named as defendant in lawsuit, under District of Columbia subsection of long-arm statute that governed personal jurisdiction based upon conduct of agent, where court did not have general or specific personal jurisdiction over foreign corporation and court could not have exercised specific personal jurisdiction over alleged non-party co-conspirator even if it had been named as defendant. *FC Inv. Group LC v. IFX Markets, Ltd.*, 2007, 479 F.Supp.2d 30, affirmed 529 F.3d 1087, 381 U.S.App.D.C. 383. Federal Courts ⇨ 1037

District court lacked jurisdiction in age discrimination suit over individual defendants who were members of employer's board of partners and principals, with exception of one member who appeared to reside in the District of Columbia as indicated in summons; complaint did not allege the residence or business of the other members of board, and plaintiffs did not allege that individual defendants were subject to jurisdiction under Dis-

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trict of Columbia long-arm statute. *Murphy v. PriceWaterhouseCoopers, LLP*, 2004, 357 F.Supp.2d 230, affirmed in part, reversed in part 595 F.3d 370, 389 U.S.App.D.C. 213, rehearing en banc denied. Federal Courts ⇨ 1037

Evidence was insufficient to establish, as basis for exercise of long-arm jurisdiction by District of Columbia (D.C.) court, the existence of an agency relationship between corporate operator of movie theater in Virginia, where injuries giving rise to negligence action against operator allegedly occurred, and parent corporation that placed advertisements in D.C. newspaper for movies showing at theaters including that one; even if operator derived financial benefit from advertisements and both corporations impliedly consented to an agency relationship, such evidence showed, at most, that they were engaged in a common enterprise and did not prove control by operator over the advertising. *Jackson v. Loews Washington Cinemas, Inc.*, 2008, 944 A.2d 1088. Federal Courts ⇨ 1051

63. Actions and proceedings

Defendant, a Maryland resident, did not waive object to District of Columbia court's personal jurisdiction over him in defamation action by filing a counterclaim after trial court had denied his initial motion to dismiss for lack of personal jurisdiction. *Charlton v. Mond*, 2010, 987 A.2d 436. Federal Courts ⇨ 1051

64. Service of process

Virginia real estate broker's mailing of copy of summons and complaint to securities broker's corporate headquarters in Nebraska did not establish jurisdiction of District of Columbia courts under District statute authorizing general jurisdiction based on corporation doing business in District, notwithstanding District of Columbia Superior Court rule that appeared to permit service upon corporations by mail. *Gorman v. Ameritrade Holding Corp.*, C.A.D.C.2002, 293 F.3d 506, 352 U.S.App.D.C. 229. Federal Courts ⇨ 1051

For the court to exercise jurisdiction over a defendant that does not reside in the District of Columbia, service of process must be authorized by the District of Columbia's long-arm statute and comport with the Due Process Clause of the Fifth Amendment. *Agee v. Sebelius*, 2009, 668 F.Supp.2d 1. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1037

Service provision of Racketeer Influenced and Corrupt Organizations Act (RICO) did not allow district court in District of Columbia to exercise personal jurisdiction over New York corporation when none of defendants in action were subject to personal jurisdiction in District of Columbia. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 2000, 116 F.Supp.2d 98, affirmed in part, remanded in part 296 F.3d 1154, 353 U.S.App.D.C. 147, certiorari denied 123 S.Ct. 1250, 537 U.S. 1187, 154 L.Ed.2d 1019. Federal Courts ⇨ 1037

65. Dismissal of actions generally

Unresolved factual questions concerning applicability of government contacts exception to personal

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jurisdiction under long-arm statute precluded dismissal of retired service member's claims against Texas non-profit corporation operating as non-commissioned officers association; questions existed as to whether corporation maintained an office in the District of Columbia, maintained an active presence in the District of Columbia representing veterans, was member's agent, or represented him before Department of Veterans Affairs. *Thomas v. Disabled American Veterans Ass'n*, 2007, 930 A.2d 997. Federal Courts ⇨ 1051

65.5. Estoppel

Representative of construction company, and its principal, was judicially estopped from claiming that loss of fee, sustained when principal's son tortiously interfered with prospective contract calling for representative to be company's exclusive case manager in qui tam action, was injury occurring in District of Columbia as required for jurisdiction under District's long arm statute; representative had earlier claimed that injury occurred in California, in similar action. *Elemery v. Philipp Holzmann A.G.*, 2008, 533 F.Supp.2d 116. Federal Courts ⇨ 1037

66. Venue generally

Plaintiff's assertion that venue in District of Columbia was proper because he was denied access to courts in Seventh Circuit was insufficient to establish personal jurisdiction over nonresident defendants in action concerning dispute over property located in Wisconsin, absent assertion that any defendant lived in or had principal place of business in District, existence of adequate basis to assert specific personal jurisdiction under District's long-arm statute, or allegation that any defendant had contacts with District, plaintiff's alleged harm arose from defendants' conduct in transacting business or supplying services in District, or occurrence of tortious injury in District. *Kurtz v. U.S.*, 2011, 779 F.Supp.2d 50, reconsideration denied 2011 WL 2457923, affirmed 2012 WL 1155801. Federal Courts ⇨ 1041

Venue in District of Columbia was proper, in employee's racial discrimination action against both employer's parent corporation and its subsidiary, where parent corporation was subject to personal jurisdiction under District of Columbia's long-arm statute by virtue of its inextricable links to and control over subsidiary, which operated businesses in the District of Columbia. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Federal Courts ⇨ 1041

Venue for malpractice suit by California tort plaintiff's children against Pennsylvania counsel who advised them not to include their claims in father's suit was properly in District of Columbia, where father's suit was litigated. *Jacobsen v. Oliver*, 2002, 201 F.Supp.2d 93. Federal Courts ⇨ 1041

67. Forum non conveniens

Convenience of parties and witnesses and interest of justice warranted transfer from District of Columbia to Northern District of West Virginia of

inmate's action alleging that agents of Federal Bureau of Prisons (BOP) violated his constitutional rights by keeping him imprisoned three years beyond his judicially imposed sentence based upon his refusal to sign installment schedule agreement for unpaid fines, where portion of prisoner's incarceration occurred in West Virginia, and warden was not subject to personal jurisdiction in District of Columbia. *Zakiya v. U.S.*, 2003, 267 F.Supp.2d 47. Federal Courts ⇨ 1041

68. Discovery

Real estate broker demonstrated that it could, through discovery, supplement its allegations that District of Columbia courts had jurisdiction over its action alleging that securities broker failed to honor contract to provide front-page link to real estate broker's Internet website, and real estate broker thus would have been entitled to discovery, absent insufficient service of process, where securities broker's customers entered into binding contracts over Internet, securities broker offered customers alternative of conducting transactions by mail or telephone, and securities broker permitted transactions 24 hours a day. *Gorman v. Ameritrade Holding Corp.*, C.A.D.C.2002, 293 F.3d 506, 352 U.S.App.D.C. 229. Federal Civil Procedure ⇨ 1275.5

District of Columbia resident, who alleged that he suffered serious ailments from the anthrax inoculations he received while in the military, was not entitled to jurisdictional discovery in his products liability action against Michigan anthrax vaccine manufacturer; it was implausible that any additional discovery would be sufficient to establish general jurisdiction in the District of Columbia, and resident did not allege how any of manufacturer's contacts with District related to or arose out of his claim, and therefore, specific jurisdiction could not be supplemented by discovery. *Savage v. Bioport, Inc.*, 2006, 460 F.Supp.2d 55. Federal Civil Procedure ⇨ 1275.5

Discovery was not warranted as to whether District Court had personal jurisdiction, pursuant to District of Columbia long-arm statute, over United States congregation in action by Palestinian residents of West Bank, where initial jurisdictional allegations were patently inadequate, and residents' arguments regarding congregation's website as basis for personal jurisdiction did not even surface in complaint. *Doe I v. State of Israel*, 2005, 400 F.Supp.2d 86. Federal Civil Procedure ⇨ 1275.5

Personal injury plaintiff would not be granted additional discovery time with respect to issue of whether federal district court in the District of Columbia had personal jurisdiction over defendant, which had manufactured candle that allegedly exploded and caused injury, where plaintiff merely asserted that he sought to establish manufacturer's business contacts within the District of Columbia, and did not even suggest that he believed that defendant had any business contacts with District of Columbia other than the attenuated link through a nationwide distributor, which court had

determined was insufficient to establish jurisdiction. *Formica v. Cascade Candle Co.*, 2001, 125 F.Supp.2d 552. Federal Civil Procedure ⇨ 1275.5

United States would not be granted opportunity to conduct jurisdictional discovery following grant of British tobacco company's motion to dismiss for lack of personal jurisdiction action in which United States sought to recover health care expenses incurred in treating patients for smoking-related illnesses, and to disgorge profits under Racketeer Influenced and Corrupt Organizations Act (RICO), where exceptionally voluminous exhibits previously submitted indicated that United States had already had ample opportunity to conduct discovery, and United States made no showing of what results it thought additional discovery would produce. *U.S. v. Philip Morris Inc.*, 2000, 116 F.Supp.2d 116. Federal Civil Procedure ⇨ 1275.5; Federal Civil Procedure ⇨ 2553

69. Presumptions and burden of proof

A plaintiff bears the burden of establishing that personal jurisdiction under District of Columbia's long-arm statute exists by demonstrating a factual basis for exercise of such jurisdiction over the defendant. *Metcalf v. Federal Bureau of Prisons*, 2008, 530 F.Supp.2d 131. Federal Courts ⇨ 1041

Plaintiff bears the burden of establishing that personal jurisdiction under the long-arm statute exists by demonstrating a factual basis for the exercise of such jurisdiction over the defendant. *Simpson v. Federal Bureau of Prisons*, 2007, 496 F.Supp.2d 187. Federal Courts ⇨ 1041

In order to meet its burden of proving the existence of specific jurisdiction, under the District of Columbia long-arm statute, a plaintiff must demonstrate that (1) the defendant transacted business in the District, (2) that the cause of action arises from the business transacted in the District, and (3) that the defendant had minimum contacts with the District such that the court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. *AGS Intern. Services S.A. v. Newmont USA Ltd.*, 2004, 346 F.Supp.2d 64. Constitutional Law ⇨ 3965(3); Federal Courts ⇨ 1041

To establish personal jurisdiction under the "transacting business" section of the District of Columbia long-arm statute, plaintiffs must demonstrate that (1) the defendant transacted business in the District; (2) the claim arose from the business transacted in the District; (3) the defendant had minimum contacts with the District; and (4) the Court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. *Jung v. Association of American Medical Colleges*, 2004, 300 F.Supp.2d 119. Federal Courts ⇨ 1041

The plaintiff bears the burden of proving a prima facie case of personal jurisdiction by alleging specific acts linking a defendant with the forum. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Federal Courts ⇨ 96

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In deciding whether a basis for personal jurisdiction exists, factual discrepancies in the record must be resolved in the plaintiff's favor. *Johnson-Tanner v. First Cash Financial Services, Inc.*, 2003, 239 F.Supp.2d 34. Federal Courts ⇨ 96

In order to establish personal jurisdiction over an nonresident defendant under the District of Columbia's long-arm statute and pursuant to due process requirements, the plaintiff must allege nonconclusory facts that establish a *prima facie* showing of personal jurisdiction. *Manifold v. Wolf Coach, Inc.*, 2002, 231 F.Supp.2d 58. Constitutional Law ⇨ 3964; Federal Courts ⇨ 1037

Plaintiff bears the burden of establishing that the trial court had personal jurisdiction over the defendant. *Holder v. Haarmann & Reimer Corp.*, 2001, 779 A.2d 264. Federal Courts ⇨ 1052.1

71. Sufficiency of evidence

Delaware corporation failed to establish that its former directors had sufficient minimum contacts with District of Columbia to permit exercise of personal jurisdiction over them in corporation's action for, *inter alia*, breach of contract and breach of fiduciary duty when corporation alleged merely that former directors, who were residents of either

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Germany or Switzerland, had served on its board of directors and that it conducted business in District of Columbia, that former directors assumed their responsibilities at board meeting held in District of Columbia, and that one former director also entered into employment contract with corporation, particularly when corporation did not allege that board meeting which occurred in District of Columbia was related to former directors' alleged unlawful conduct, or dispute allegation that all other board meetings occurred in Germany. *NAWA USA, Inc. v. Bottler*, 2008, 533 F.Supp.2d 52, appeal dismissed 2008 WL 5453996. Federal Courts ⇨ 1037

72. Review

Assertion of libel claim under District of Columbia law against defendants over whom court found that it could not exercise personal jurisdiction did not rise to level of "serious and studied disregard for the orderly process of justice," as required to impose sanctions for multiplying proceedings unreasonably and vexatiously. *McIntosh v. Gilley*, 2010, 753 F.Supp.2d 46. Federal Civil Procedure ⇨ 2771(6)

§ 13-425. Inconvenient forum.

Notes of Decisions

Contracts, forum selection clause 5.5

1. In general

District court sitting in District of Columbia applies the District of Columbia's choice of law rules in determining which state's laws apply in action arising under court's diversity jurisdiction. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 2005, 398 F.Supp.2d 147, amended in part 439 F.Supp.2d 124. Federal Courts ⇨ 409.1

The "doctrine of forum non conveniens" permits a court to dismiss an action over which it has jurisdiction when there is an adequate alternative forum in which the case can be more conveniently heard. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 45

Doctrine of forum non conveniens presupposes that there are at least two jurisdictions in which defendant may be sued, and therefore threshold inquiry is whether there is an adequate alternative forum in which plaintiff may bring his claims. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 45

4. Availability of alternate forums

Sweden offered adequate alternative forum for claims for damages, return of property, and cease and desist order asserted by consultancy firm and its shareholders against Kingdom of Sweden, Swedish national telephone company, and Swedish corporation arising out of Swedish corporation's alleged takeover of firm's Swedish operations, and both public and private interests favored action being heard in Sweden rather than District of

Columbia, warranting dismissal on grounds of forum non conveniens, given that access to sources of proof would be easier if case was heard in Sweden, where most if not all potential witnesses and evidence was likely located, alleged harm to firm appeared to have been caused in significant measure by requirements of Swedish law, none of events or parties had connection with District of Columbia, except that Sweden had embassy there, and local community, contrary to citizens of Sweden, were unlikely to have any special interest in the litigation. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 45

A prerequisite to dismissal on the grounds of forum non conveniens is the availability of an alternative forum in which the plaintiff may bring his or her action. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

The superior court may dismiss a case for forum non conveniens only if the defendants stipulate that they will consent to jurisdiction in the alternative forum and waive any defenses based on the applicable statutes of limitations in that forum. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

Dismissal of patient's respondeat superior claims against Maryland corporations that employed Maryland pharmacist who allegedly gave patient wrong prescription would be expressly conditioned upon corporations' filing of papers formally consenting to personal jurisdiction in Maryland and waiving any defenses based upon any applicable

statutes of limitations. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

5. Plaintiff's choice of forum

While, under doctrine of *forum non conveniens*, plaintiff's choice of forum is usually given a strong presumption, this factor carries much less weight when plaintiff is also a stranger to the forum. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 45

Generally, unless balance of relevant factors is strongly in favor of defendant, plaintiff's choice of forum should rarely be disturbed. *Dennis v. Edwards*, 2003, 831 A.2d 1006. Federal Courts ⇨ 1052.1

5.5. Contracts, forum selection clause

Under the District of Columbia choice of law rules in contract cases, the contacts to be taken into account to determine the law applicable to an issue include: (a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of performance, (d) the location of the subject matter of the contract, and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties. *Wright v. Sony Pictures Entertainment, Inc.*, 2005, 394 F.Supp.2d 27. Contracts ⇨ 144

Under District of Columbia law, choice-of-law provision governing contract claims does not cover tort claims arising from same underlying events unless parties so intend. *Minebea Co., Ltd. v. Papst*, 2005, 377 F.Supp.2d 34. Contracts ⇨ 206

Under District of Columbia law, forum selection clause in contract for transport and storage of household goods establishing venue in Florida was not enforceable in shipper's action alleging negligence and breach of contract, where goods did not leave District of Columbia, carrier and its delegates all did business in District, clause was included in boilerplate contract, shipper was not sophisticated businessperson, and additional expense in bringing suit in Florida would effectively deprive shipper of her day in court. *Byrd v. Admiral Moving and Storage, Inc.*, 2005, 355 F.Supp.2d 234. Contracts ⇨ 127(4)

Under District of Columbia law, fact that contractual forum selection clause was not subject of free negotiation does not necessarily undermine its enforcement. *Byrd v. Admiral Moving and Storage, Inc.*, 2005, 355 F.Supp.2d 234. Contracts ⇨ 127(4)

Under District of Columbia law, factors to be considered in determining whether contract's forum selection clause is enforceable include convenience of forum given parties' expressed preference for that venue, and fairness of transfer in light of forum selection clause and parties' relative bargaining power. *Byrd v. Admiral Moving and Storage, Inc.*, 2005, 355 F.Supp.2d 234. Contracts ⇨ 127(4)

Under District of Columbia law, contractual forum selection clauses are *prima facie* valid, absent showing that enforcement would be unreasonable and unjust, or that clause was invalid for such

reasons as fraud or overreaching. *Byrd v. Admiral Moving and Storage, Inc.*, 2005, 355 F.Supp.2d 234. Contracts ⇨ 127(4)

Consumer who subscribed to Internet digital subscriber line (DSL) service was provided adequate notice of the forum selection clause in service agreement, even though clause did not appear in all capital letters and was placed in the section entitled "General Provisions," rather than "Limitations of Liability and Remedies," where consumer entered contract by clicking an "Accept" button below scroll box containing agreement. *Forrest v. Verizon Communications, Inc.*, 2002, 805 A.2d 1007. Contracts ⇨ 127(4)

Unavailability of class action mechanism did not in itself make forum selection clause in subscription agreement for digital subscriber line (DSL) service unenforceable; even if forum selection clause was enforced, consumer could still have his day in court and given proximity of court specified in clause would have little difficulty in doing so. *Forrest v. Verizon Communications, Inc.*, 2002, 805 A.2d 1007. Contracts ⇨ 127(4)

6. Discretion of court

Forum non conveniens determination is committed to the sound discretion of the trial court. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 45

Court of Appeals may exercise its discretion to hear appeal of trial court's denial of motion to dismiss on grounds of forum non conveniens upon certification from Superior Court, pursuant to statutory procedures; certification procedure is intended to be exceptional and not merely a means of accelerated review for what may appear to be a difficult issue. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1062

7. Grounds considered—In general

Former Swedish and American attorneys for Swedish scientist and corporation, of which he was managing director and sole shareholder, failed to show Sweden was available as an adequate forum for resolution of action brought by scientist and his corporation alleging claims arising from attorneys' improper representation of plaintiffs in copyright infringement actions, and thus dismissal of action on grounds of forum non conveniens was not appropriate; although Sweden offered well-developed legal system with many important procedural safeguards such as right to present evidence and call witnesses and right to appeal, defendants failed to demonstrate what causes of action or remedies would actually be available to plaintiffs in Sweden. *Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 2011, 786 F.Supp.2d 240. Federal Courts ⇨ 45

Under District of Columbia choice of law rules, in determining applicable law with regard to tort claim, court must consider place where injury occurred, place where conduct causing injury occurred, residence, domicile, place of incorporation or place of business of parties, and place where parties' relationship, if any, is centered. *Minebea Co., Ltd. v. Papst*, 2005, 377 F.Supp.2d 34. Torts ⇨ 103

Breach of contract action by terminated employee would be transferred on former employer's motion, based on considerations of convenience and interest of justice, from District of Columbia to District of Maryland, where it could have originally been brought; although District of Columbia, where employee resided, was favored by employee, it lacked meaningful ties to controversy, rather, Maryland was where decision to discharge employee was made and communicated to employee, and where relevant documents, material witnesses, and employer's corporate offices were located, transfer of case would promote judicial economy, in that it would likely involve interpretation of Maryland law, and would not delay case's resolution, and local interest favored Maryland, where employer had corporate offices and operative events occurred. *Schmidt v. American Institute of Physics*, 2004, 322 F.Supp.2d 28. Federal Courts ⇨ 1041

District of Columbia choice-of-law rules comprise a balancing test that weighs the competing interests of the subject jurisdictions to determine which jurisdiction should govern a particular substantive matter, and, in applying this balancing test, court considers various factors, such as the place of contracting, the place of contract negotiation, the place and performance of the contract, the location of the subject matter of the contract, the place of incorporation, and the parties' place of business. *Turkmani v. Republic of Bolivia*, 2002, 273 F.Supp.2d 45, dismissed 2004 WL 3016252. Contracts ⇨ 144

District of Columbia's choice of law analysis incorporates four factors identified by Restatement of Conflicts of Laws: (1) where the injury occurred; (2) where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation and place of business of the parties; (4) where the relationship is centered. *Bryson v. Gere*, 2003, 268 F.Supp.2d 46. Action ⇨ 17

In resolving choice of law questions, District of Columbia employs governmental interests approach, which balances competing interests of jurisdictions by considering: (1) place of injury, (2) place where conduct occurred, (3) domicile of parties, and (4) place where relationship between parties is centered. *Jacobsen v. Oliver*, 2002, 201 F.Supp.2d 93. Action ⇨ 17

Forum non conveniens is not a ground for setting aside a default. *Digital Broadcast Corp. v. Rosenman & Colin, LLP*, 2004, 847 A.2d 384. Federal Courts ⇨ 1052.1

A court may properly conclude that an initially appropriate forum has become inconvenient as a result of events that have occurred during the pendency of the litigation. *Sampson v. Johnson*, 2004, 846 A.2d 278. Federal Courts ⇨ 1052.1

Subcontractor's suit against general contractor to recover payment on contract to install audio-visual equipment at college in another state and perform training and maintenance could be dismissed based on forum non conveniens; even though the subcontractor was a District of Columbia resident and performed more than two thirds

of the work there, this factor was outweighed by the need to apply Maryland law and the quality of the work of running wires and installing the equipment in Maryland. *Future View, Inc. v. CritiCom, Inc.*, 2000, 755 A.2d 431. Federal Courts ⇨ 1052.1

Corporate prison operator failed to establish that District of Columbia was seriously inconvenient forum for lawsuit brought against it by District inmate, who was allegedly assaulted and sexually harassed by correction officer while housed in Arizona prison; although litigation would be less inconvenient and expensive for prison operator if conducted in Arizona and court would have to apply Arizona law, inmate had been transferred to Colorado facility, and District's interests in ensuring its inmates were treated humanely and had fair opportunity to litigate their rights to be treated fairly while in custody outweighed any interest Arizona had in matter. *Morton v. Burns*, 130 WLR 1901 (Super. Ct. 2002).

Patient's respondeat superior claims against Maryland corporations that employed Maryland pharmacist, who allegedly gave patient wrong prescription, should have been dismissed for forum non conveniens, where none of the parties resided in District of Columbia, claim arose in Maryland, which was only jurisdiction that had meaningful relationship to litigation, and patient's forum selection appeared to have been result of strategy to avoid Maryland's statutory damage caps in favor of unlimited damages under District of Columbia law. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

8. — Connections with District, grounds considered

Under District of Columbia choice of law rules, District of Columbia law applied to negligent misrepresentation claim asserted by insurer against insurance broker that prepared insured's application for commercial general liability (CGL) policy, given that insured's headquarters were located in District of Columbia and underlying third-party action against insured was brought in District of Columbia. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 2005, 398 F.Supp.2d 147, amended in part 439 F.Supp.2d 124. Insurance ⇨ 1091(4)

In determining which jurisdiction's law controls on particular issue, courts of District of Columbia employ modified governmental interest analysis, under which court must evaluate governmental policies underlying applicable laws and determine which jurisdiction's policy would be most advanced by having its law applied to facts of case. *Minebea Co., Ltd. v. Papst*, 2005, 377 F.Supp.2d 34. Action ⇨ 17

Under Title VII's special venue provision, venue of employment discrimination action was properly in Eastern District of Virginia, and not District of Columbia; all of the alleged adverse employment acts occurred in Virginia, if not for alleged unlawful termination plaintiff would still be employed in Virginia, both plaintiff's residence and defendants' place of business were in Virginia, and all of

plaintiff's employment records were kept in Virginia. *El v. Belden*, 2004, 360 F.Supp.2d 90. Federal Courts ⇨ 88; Federal Courts ⇨ 1041

Venue for an employment discrimination action cannot lie in the District of Columbia when a substantial part, if not all, of the challenged employment actions occurred outside the District. *El v. Belden*, 2004, 360 F.Supp.2d 90. Federal Courts ⇨ 1041

Under District of Columbia law, of the greatest importance for the choice of law inquiry in a contract action is the place where the parties were to perform their respective obligations under the agreement. *Samra v. Shaheen Business and Investment Group, Inc.*, 2005, 355 F.Supp.2d 483. Contracts ⇨ 144

Under District of Columbia choice of law rules, Florida law governed former employee's action against former employer to enforce purported settlement agreement arising from alleged employment contract, inasmuch as Florida, which was former employee's state of residence, as well as location of formation of alleged settlement agreement and location of principal performance, had more substantial interest in resolution of dispute than Delaware, where former employer was incorporated, District of Columbia, where employment contract was allegedly formed, Kingdom of Jordan, where former employer's owner resided, or England, where purported settlement agreement was preliminarily negotiated. *Samra v. Shaheen Business and Investment Group, Inc.*, 2005, 355 F.Supp.2d 483. Compromise And Settlement ⇨ 21

Under District of Columbia law, in contract cases the contacts to be taken into account to determine the law applicable to an issue include: (1) the place of contracting; (2) the place of negotiation of the contract; (3) the place of performance; (4) the location of the subject-matter of the contract; and (5) the domicile, residence, nationality, place of incorporation and place of business of the parties. *Samra v. Shaheen Business and Investment Group, Inc.*, 2005, 355 F.Supp.2d 483. Contracts ⇨ 144

District of Columbia federal court was not available forum for habeas corpus petition of Naval Reserve officer who sought to restrain his deployment to Afghanistan; District of Columbia was not officer's domicile, had no proper custodian within its reach against whom district court's writ could run, and it generated no deployment orders to officer. *Blackmon v. England*, 2004, 323 F.Supp.2d 1. Habeas Corpus ⇨ 638

District of Columbia law, rather than Virginia law, applied to defendants' request to reduce the ad damnum clause in complaint in medical malpractice action; although plaintiff was a Virginia resident, defendants conducted business in the District of Columbia, litigation arose from health care treatment provided pursuant to a plan obtained through plaintiff's District of Columbia employer, and application of Virginia's \$1,000,000 cap on medical malpractice claims would contravene the

District of Columbia's interest in protecting its workers and promoting corporate accountability. *Bucci v. Kaiser Permanent Foundation Health Plan of Mid-Atlantic States, Inc.*, 2003, 278 F.Supp.2d 34. Health ⇨ 608

Under District of Columbia's choice-of-law rules, New York law governed determination of prejudgment interest rate to which bondholder was entitled in his action for unpaid principal and interest against issuer of bonds, given that bonds were issued in New York and were to be presented there for payment from sinking fund created and maintained in New York, that bonds were redeemable on publication of notice within New York, and that New York bank was appointed as fiscal agent for payment of principal and interest on bonds, as well as sinking fund agent for bonds. *Turkmani v. Republic of Bolivia*, 2002, 273 F.Supp.2d 45, dismissed 2004 WL 3016252. Interest ⇨ 2

Under District of Columbia choice-of-law rules, law of District of Columbia would apply to defendants' contention that plaintiffs' remaining claims against them, which arose from partnership agreement, were barred by collateral estoppel, if collateral estoppel were characterized as substantive law; although partnership was incorporated in Minnesota and property in which partnership was invested was located in Minnesota, a substantial portion of events giving rise to claim occurred in District of Columbia, as well as solicitation, formation of partnership, and pre-purchase activity. *Bryson v. Gere*, 2003, 268 F.Supp.2d 46. Judgment ⇨ 634

District of Columbia had most substantial relationship to California client's malpractice claim against Pennsylvania counsel, for purpose of determining choice of law; representation was for purpose of litigating actions in District, and acts of alleged malpractice occurred there. *Jacobsen v. Oliver*, 2002, 201 F.Supp.2d 93. Health ⇨ 608

Choice of law doctrine would require application of Maryland law to determine liability coverage under bingo parlor's automobile policy for death of passenger in van on way home from gaming; the insured and insurer were Maryland corporations, the policy was prepared and delivered in Maryland, and the suit was not a personal injury action based on the accident occurring in the District of Columbia. *Holmes v. Brethren Mut. Ins. Co.*, 2005, 868 A.2d 155. Insurance ⇨ 1091(10)

The law of the District of Columbia, rather than the law of Maryland, applied to determine ownership of joint bank accounts in Maryland that bore the name of decedent and brother of decedent, in probate action; the District of Columbia's interests were substantially stronger. In re *Estate of Blake*, 2004, 856 A.2d 1151. Executors And Administrators ⇨ 2

A preliminary injunction against arbitration of dispute arising out of government contract was supported by irreparable harm to the District of Columbia in the form of the unnecessary and additional expense of arbitration, delay of the inevitable proceeding before the Contract Appeals

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Note 8

Board (CAB), and the use of a closed conference room to resolve a dispute over a public contract. *District of Columbia v. Greene*, 2002, 806 A.2d 216. *Alternative Dispute Resolution* ⇨ 186

In *forum non conveniens* analysis, when the plaintiff resides in another jurisdiction, court affords less deference to her choice of forum, particularly where the defendant also does not live in the District of Columbia. *Blake v. Professional Travel Corp.*, 2001, 768 A.2d 568, certiorari denied 122 S.Ct. 923, 534 U.S. 1115, 151 L.Ed.2d 887. *Federal Courts* ⇨ 1051

In determining whether to dismiss on ground of *forum non conveniens*, the inquiry is not whether the District of Columbia is the best forum for the litigation, but rather whether the District has so little to do with the case that its courts should decline to hear it. *Blake v. Professional Travel Corp.*, 2001, 768 A.2d 568, certiorari denied 122 S.Ct. 923, 534 U.S. 1115, 151 L.Ed.2d 887. *Federal Courts* ⇨ 1051

Dismissal of former employee's action against employer for sexual discrimination in violation of District of Columbia Human Rights Act (DCHRA) was not warranted on ground of *forum non conveniens*, even though decisions adverse to employee were made in Virginia and employer conducted much more business in Virginia than in District; employee's supervisor was a District resident, much of the alleged conduct occurred in District, and witnesses and evidence were at least as available in District as they were in Virginia. *Blake v. Professional Travel Corp.*, 2001, 768 A.2d 568, certiorari denied 122 S.Ct. 923, 534 U.S. 1115, 151 L.Ed.2d 887. *Federal Courts* ⇨ 1051

9. — Inconvenience to parties and witnesses, grounds considered

Private interest factors weighed against dismissal, on grounds of *forum non conveniens*, of action brought by Swedish scientist and corporation, of which he was managing director and sole shareholder, against his former Swedish and American attorneys, alleging claims arising from attorneys' improper representation of plaintiffs in copyright infringement actions; District is location where Swedish attorneys deliberately reached to conduct business, prior member of court handled underlying litigation which formed factual basis for many of scientist's claims, physical location of relevant documents, whether in Sweden or District of Columbia, was less important in determining convenience of parties because many if not all of documents could presumably be made available electronically, availability of compulsory process for attendance of unwilling witnesses, and cost of obtaining the presence of willing witnesses was in equipoise between Sweden and United States, and litigation of all issues against all defendants in District would conserve most judicial resources and would possibly avoid duplicative litigation. *Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 2011, 786 F.Supp.2d 240. *Federal Courts* ⇨ 45

In determining drug manufacturer's motion to transfer patient's negligence action from the Dis-

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trict of Columbia to district court in North Carolina, the inconvenience to other patients of traveling for trial was the most critical factor to examine, following finding that patient's choice of forum in District of Columbia had no meaningful nexus to injuries he allegedly suffered in North Carolina; District of Columbia court was without authority to compel attendance of North Carolina patients, many of whom were essential to case, and patient's counsel could not guarantee that all of the patients would be willing to travel. *McClamrock v. Eli Lilly and Co.*, 2003, 267 F.Supp.2d 33. *Federal Courts* ⇨ 113

10. — Public or private interest, grounds considered

Under District of Columbia choice-of-law rules, court must first determine if there is conflict between laws of relevant jurisdictions; only if such conflict exists must court then determine which jurisdiction has more substantial interest in resolution of issues. *Young Women's Christian Ass'n of the National Capital Area, Inc. v. Allstate Ins. Co. of Canada*, C.A.D.C.2002, 275 F.3d 1145, 348 U.S.App.D.C. 401, on remand 214 F.R.D. 1. *Federal Courts* ⇨ 1052.1

Under District of Columbia law, where laws of two jurisdictions are involved, District of Columbia courts apply the law of the state with the more substantial interest in the matter. *Nationwide Mut. Ins. Co. v. Richardson*, C.A.D.C.2001, 270 F.3d 948, 348 U.S.App.D.C. 124, certified question answered 826 A.2d 310, rehearing granted, opinion vacated 832 A.2d 752, vacated pursuant to settlement 844 A.2d 344. *Action* ⇨ 17

Federal district court sitting in diversity jurisdiction correctly determined that District of Columbia law governed interpretation of comprehensive general insurance policy purchased from Ohio insurer; the District of Columbia had the most substantial interest in the matter, since it was both the location where the underlying events occurred and the place of the insured's headquarters. *Nationwide Mut. Ins. Co. v. Richardson*, C.A.D.C. 2001, 270 F.3d 948, 348 U.S.App.D.C. 124, certified question answered 826 A.2d 310, rehearing granted, opinion vacated 832 A.2d 752, vacated pursuant to settlement 844 A.2d 344. *Insurance* ⇨ 1091(5)

Under District of Columbia's choice-of-law rule providing for constructive blending of governmental interests and most significant relationship test, court must evaluate governmental policies underlying the applicable laws and determine which jurisdiction's policy would be more advanced by the application of its law to the facts of the case, and, in so doing, court should also consider relevant factors enumerated in Restatement (Second) of Conflict of Laws, which help to identify the jurisdiction with the most significant relationship to the dispute, that presumptively being the jurisdiction whose policy would be more advanced by application of its law. *Essroc Cement Corp. v. CTI/D.C., Inc.*, 2010, 740 F.Supp.2d 131. *Action* ⇨ 17

Under District of Columbia choice of law rules, the jurisdiction with the most significant interest

in insurance cases is either the place of the occurrence that requires coverage or the insured's headquarters. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 2005, 398 F.Supp.2d 147, amended in part 439 F.Supp.2d 124. Insurance ⇨ 1089

Choice of law rules in the District of Columbia require the court to evaluate the governmental policies underlying the applicable laws and determine which jurisdiction's policy would be more advanced by the application of its law. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 2005, 398 F.Supp.2d 147, amended in part 439 F.Supp.2d 124. Action ⇨ 17

Under the District of Columbia choice of law rules, the District of Columbia had a more substantial interest in the resolution of action brought by game show contestant against entertainment company concerning validity of contestant release form than did the state of Virginia, and, thus District of Columbia law would apply; the contract was negotiated, signed, and substantially performed in the District of Columbia, and, furthermore, the elements of contestant's tort claims, duty, tortious conduct, and damages which were directly implicated by the application of the prospective liability waiver, all arose in the District of Columbia. *Wright v. Sony Pictures Entertainment, Inc.*, 2005, 394 F.Supp.2d 27. Public Amusement And Entertainment ⇨ 2

Under District of Columbia choice of law rules, the court must first determine whether there is a conflict in the potentially applicable legal standards of the two jurisdictions in question; then, if there is a conflict, the District of Columbia's choice of law rules will determine which jurisdiction has a more substantial interest in the resolution of the issues. *Wright v. Sony Pictures Entertainment, Inc.*, 2005, 394 F.Supp.2d 27. Action ⇨ 17

District of Columbia (D.C.) law applied to civil conspiracy claim brought in shareholder derivative action alleging that chairman of company incorporated in Bermuda made illegal campaign contributions; D.C. had a more substantial interest in the application of its substantive law inasmuch as the majority of the illegal activities alleged went beyond internal corporate affairs and encompassed a broad spectrum of D.C.-based participants whose activities would have taken place almost exclusively in the D.C. area. *Meng v. Schwartz*, 2004, 305 F.Supp.2d 49. Conspiracy ⇨ 1.1

Pursuant to the choice of law rules of the District of Columbia, a court must first determine whether there is a conflict of laws between the relevant jurisdictions, and upon finding such a conflict, court should apply the law of the jurisdiction that has the more substantial interest. *Meng v. Schwartz*, 2004, 305 F.Supp.2d 49. Action ⇨ 17

If there is an alternative forum that has jurisdiction over defendant, court deciding motion to dismiss on forum non conveniens grounds should balance the private interests of the litigants and the public interest, and the weight of either the private interest factors or the public interest factors alone may be cause for dismissal. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 45

Private interests of the litigants that district court had to consider before granting dismissal based on forum non conveniens included relative ease of access to sources of proof, availability of compulsory process for attendance of unwilling witnesses, cost of obtaining attendance of willing witnesses, possibility of view of premises, if appropriate to the action, and all other practical problems that would make trial of case easy, expeditious, and inexpensive. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 45

Public interest in equitable administration of the laws must be considered when court decides motion to dismiss for forum non conveniens. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 45

Public interest factors to be considered in deciding motion to dismiss on grounds of forum non conveniens attest to whether lawsuit is unnecessarily burdensome on the court or the residents of the community in which it is brought, and whether the community in which action leading to the lawsuit actually took place has an interest in the litigation. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 45

In tort cases, courts in the District of Columbia employ a governmental interests analysis to determine which jurisdiction's substantive law controls. *Jaffe v. Pallotta Teamworks*, 2003, 276 F.Supp.2d 102, reversed and remanded 374 F.3d 1223, 362 U.S.App.D.C. 398. Torts ⇨ 103

In determining the applicable state law governing a particular substantive matter pursuant to District of Columbia's choice-of-law rules, the court applies the law of the jurisdiction with the more substantial interest in the resolution of the case. *Turkmani v. Republic of Bolivia*, 2002, 273 F.Supp.2d 45, dismissed 2004 WL 3016252. Action ⇨ 17

District of Columbia courts use a "governmental interests" analysis in choice-of-law cases, which involves determining which jurisdiction's policy would be more advanced by the application of its law to the facts of the case under review. *Bryson v. Gere*, 2003, 268 F.Supp.2d 46. Action ⇨ 17

Under District of Columbia's choice of law rules, part of the test of determining the jurisdiction whose policy would be most advanced is determining which jurisdiction has the most significant relationship to the dispute. *Bryson v. Gere*, 2003, 268 F.Supp.2d 46. Action ⇨ 17

Private factors warranted transfer of patient's diversity action against drug manufacturer from the District of Columbia to North Carolina, even if patient's counsel and Federal Drug Administration (FDA) witnesses were located in District of Columbia; patient, a resident of North Carolina, allegedly suffered injuries after ingesting manufacturer's drug prescribed by physician in North Carolina, patient would need testimony of North Carolina physicians to prove damages, patient did not dem-

onstrate how FDA witnesses would be important to strict liability and negligence claims, and patient did not establish that witnesses refused to testify or that their testimony could not be secured by other means. *McClamrock v. Eli Lilly and Co.*, 2003, 267 F.Supp.2d 33. Federal Courts ⇨ 113; Federal Courts ⇨ 133

Consideration of public interest factors supported conclusion that transfer of venue of patient's negligence action against drug manufacturer from District of Columbia to North Carolina district court was warranted; North Carolina law would most likely control claim of patient, who was a North Carolina resident who allegedly was injured after ingesting drug prescribed to him in North Carolina. District of Columbia court had minimal interest in deciding the controversy, and there was no allegation that transfer would result in unnecessary delay. *McClamrock v. Eli Lilly and Co.*, 2003, 267 F.Supp.2d 33. Federal Courts ⇨ 113

To prevail on motion to dismiss on forum non conveniens grounds, defendant must show that alternative forum exists and that balance of public and private interests favors dismissal. *Atlantic Tele-Network, Inc. v. Inter-American Development Bank*, 2003, 251 F.Supp.2d 126. Federal Courts ⇨ 45

Private interest factors to consider in determining whether to dismiss suit on forum non conveniens grounds include: ease of access to proof, compulsory process to obtain attendance of hostile witnesses, cost of transporting friendly witnesses, and other problems that represent impediments to expeditious and inexpensive trial. *Atlantic Tele-Network, Inc. v. Inter-American Development Bank*, 2003, 251 F.Supp.2d 126. Federal Courts ⇨ 45

Public interest factors to consider in determining whether to dismiss suit on forum non conveniens grounds are: desirability of clearing foreign controversies from congested dockets, extent of any local interest in resolving controversy, and ease with which present forum will be able to apply laws of unfamiliar jurisdiction. *Atlantic Tele-Network, Inc. v. Inter-American Development Bank*, 2003, 251 F.Supp.2d 126. Federal Courts ⇨ 45

Under District of Columbia Circuit's conflict of law principles, law of jurisdiction with stronger interest in application of its own law will apply; if interests of two jurisdictions in application of their law are equally weighty, law of forum will be applied. *Jacobsen v. Oliver*, 2002, 201 F.Supp.2d 93. Action ⇨ 17

District of Columbia's choice-of-law principles utilize governmental interests analysis, under which court evaluates governmental policies underlying applicable laws and determines which jurisdiction's policy would be more advanced by application of its law to facts of case under review. *Shenandoah Associates Ltd. Partnership v. Tirana*, 2001, 182 F.Supp.2d 14. Action ⇨ 17

As part of governmental interests choice-of-law analysis under District of Columbia law, court may look to factors contained in Restatement (Second) of Conflicts of Laws, including: (1) place where injury occurred, (2) place where conduct causing injury occurred, (3) domicile, residence, nationality, place of incorporation, and place of business of parties, and (4) place where relationship is centered. *Shenandoah Associates Ltd. Partnership v. Tirana*, 2001, 182 F.Supp.2d 14. Action ⇨ 17

Under District of Columbia's choice-of-law principles, Virginia law applied in action by limited partnerships against attorney for management company that collected rents for partnerships' apartment buildings, alleging tortious interference with contract, since Virginia had more significant interest in seeing its substantive law applied; all three partnerships, as well as their physical assets, were located in Virginia, and contracts between partnerships and management company were written and executed pursuant to Virginia law. *Shenandoah Associates Ltd. Partnership v. Tirana*, 2001, 182 F.Supp.2d 14. Torts ⇨ 202

Under District of Columbia choice-of-law rules, a court must first determine whether there is a conflict between the laws of the relevant jurisdictions; if a conflict exists, under the governmental interest analysis, court must apply the law of the jurisdiction which has a more substantial interest in the case. *Century International Arms, Ltd. v. Federal State Unitary Enterprise State Corporation "Rosvoorouzheynie"*, 2001, 172 F.Supp.2d 79. Action ⇨ 17

Even if issue was how an existing contract should be interpreted, rather than whether contract existed between Russian exporter and Canadian and American distributors, under District of Columbia choice-of-law rules, court would apply Russian law to the dispute since exporter was an agency or instrumentality of the Russian government, subject matter of the alleged contract was Russian arms, and Russia had an extremely strong interest in ensuring that its state-controlled agencies are not subjected to laws that may contravene its own, so as not to interfere with the Russian government's ability to continue to transact business with North American companies. *Century International Arms, Ltd. v. Federal State Unitary Enterprise State Corporation "Rosvoorouzheynie"*, 2001, 172 F.Supp.2d 79. Contracts ⇨ 144

Public interest factors supported maintenance of action seeking, inter alia, declaration that funds deposited in bank belonged solely to decedent's estate in District of Columbia, rather than South Carolina; although legatee under decedent's will who withdrew funds and personal representative of decedent's estate resided in South Carolina and funds sought were being held in South Carolina, decedent was domiciled in District of Columbia at time of her death and funds were on deposit in District of Columbia at that time, District of Columbia has significant interest in ensuring that assets of deceased residents are collected and distributed according to resident's will, question of who is entitled to proceeds from decedent's local

bank account is matter of local concern, and nature of claims involved only application of local law. *Dennis v. Edwards*, 2003, 831 A.2d 1006. Federal Courts ⇨ 1052.1

In forum non conveniens analysis, public interest factors for consideration include: (1) administrative difficulties caused by local court dockets congested with foreign litigation; (2) local interest in having localized controversies decided at home; (3) unfairness of imposing burden of jury duty on citizens of forum having no relation to litigation; and (4) avoidance of unnecessary problems in conflict of laws in interpretation of laws of another jurisdiction. *Dennis v. Edwards*, 2003, 831 A.2d 1006. Federal Courts ⇨ 1052.1

In forum non conveniens analysis, private interest factors for consideration include: (1) relative ease of access to proof; (2) availability of compulsory process to secure attendance of unwilling witnesses and cost of securing attendance of willing witnesses; (3) other practical problems related to ease, expense, and expedition of trial; (4) any evidence that choice of forum was made to harass defendant; and (5) relative advantages or disadvantages to fair trial. *Dennis v. Edwards*, 2003, 831 A.2d 1006. Federal Courts ⇨ 1052.1

In determining which jurisdiction's law will apply to substantive issues, courts use government interest analysis which requires first court evaluation of governmental policies underlying applicable conflicting laws and then determination as to which jurisdiction's policy would be most advanced by having its law applied to facts of case. *Dennis v. Edwards*, 2003, 831 A.2d 1006. Action ⇨ 17

Private interest factors supported maintenance of action seeking, inter alia, declaration that funds deposited in bank belonged solely to decedent's estate in District of Columbia, rather than South Carolina; although legatee under decedent's will who withdrew funds resided in South Carolina, controversy involved determination of rights of decedent's estate in bank account held at time of death in District of Columbia where estate was being administered, most witnesses resided in District of Columbia, there was no evidence personal representative of estate who brought action selected this forum for harassment purposes, and any inconvenience to personal representative, who resided in South Carolina, was irrelevant as he sued in his representative capacity. *Dennis v. Edwards*, 2003, 831 A.2d 1006. Federal Courts ⇨ 1052.1

Private interest factors, relevant to a forum non conveniens analysis include: 1) the relative ease of access to sources of proof, 2) the availability of compulsory process for attendance of unwilling witnesses, 3) the cost of obtaining attendance of willing witnesses, 4) the possibility of viewing the premises, if view would be appropriate to the action, 5) all other practical problems concerning the ease, expedition and expense of the trial, 6) the enforceability of a judgment once obtained, 7) evidence that the plaintiff attempted to vex, harass or oppress the defendant by his choice of forum, and 8) the relative advantages and obstacles to fair

trial. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1052.1

Public interest factors, for purposes of considering motion to dismiss for forum non conveniens, emphasize burden imposed on forum in relation to its interest in litigation, as well as the interest of other potential fora in addressing the dispute locally. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1052.1

Private interest factors, relevant to a forum non conveniens analysis include: 1) administrative difficulties caused by local court dockets congested with foreign litigation, 2) the local interest in having localized controversies decided at home, 3) the unfairness of imposing the burden of jury duty on the citizens of a forum having no relation to the litigation, and 4) the avoidance of unnecessary problems in conflict of laws and in the interpretation of the laws of another jurisdiction. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1052.1

Under a choice of law analysis, the court applies another state's law when (1) its interest in the litigation is substantial, and (2) application of District of Columbia law would frustrate the clearly articulated public policy of that state. *Herbert v. District of Columbia*, 2002, 808 A.2d 776. Action ⇨ 17

Under the "governmental interests" analysis, used to determine applicable law in tort cases, when the policy of one state would be advanced by application of its law, and that of another state would not be advanced by application of its law, a false conflict appears and the law of the interested state prevails; a true conflict arises when both states have an interest in applying their own laws to the facts of the case, in which case the law of the forum will be applied unless the foreign state has a greater interest in the controversy. *Herbert v. District of Columbia*, 2002, 808 A.2d 776. Torts ⇨ 103

In applying the governmental interests analysis to determine applicable law in tort cases, the court considers four factors: (1) the place where the injury occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (4) the place where the relationship is centered. *Herbert v. District of Columbia*, 2002, 808 A.2d 776. Torts ⇨ 103

Court considers two categories of factors in deciding whether to dismiss for forum non conveniens: the private interests of the litigants and the public interests of the forum; once those factors are weighed against each other, unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed. *Blake v. Professional Travel Corp.*, 2001, 768 A.2d 568, certiorari denied 122 S.Ct. 923, 534 U.S. 1115, 151 L.Ed.2d 887. Federal Courts ⇨ 1051

The private interest factors that are to be analyzed by a trial judge in considering a motion to dismiss for forum non conveniens are: (1) the convenience of the parties and the witnesses; (2)

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the ease of access to the source of proof; (3) the availability and cost of compulsory process; (4) the enforceability of any judgment obtained; (5) the ease or difficulty in viewing premises relevant to the litigation; (6) the existence or absence of any attempt by plaintiff to vex or harass the defendant though the choice of forum; and (7) the existence or absence of evidence that plaintiff chose this forum to take advantage of favorable law. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

The public interest factors that are to be analyzed by a trial judge in considering a motion to dismiss for forum non conveniens are: (1) the court's interest in clearing foreign controversies from its own congested dockets; (2) the burden of jury duty on the citizens of a forum having no relation to the litigation; (3) the societal interest in having disputes adjudicated in the forums in which they are most closely linked; and (4) the court's interest in avoiding the burden of having to construe a foreign jurisdiction's law. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

11. Procedure, generally

Under District of Columbia choice of law rules, where there is no specification by the parties of which jurisdiction's law will govern their agreement, a court is required to evaluate the nature of the various potentially governing jurisdictions' contacts with the subject matter of the controversy and determine, on the basis of that evaluation, which jurisdiction has the more substantial interest in the resolution of the issues. *Samra v. Shaheen Business and Investment Group, Inc.*, 2005, 355 F.Supp.2d 483. Action ⇨ 17

Terminated employee's right to challenge the validity of a final judgment of a District of Columbia court was procedural in nature, and thus, the law of the forum applied instead of Maryland law, which was named in the choice of law provision in employee's contract. *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Science, Inc.*, 2004, 858 A.2d 457. Contracts ⇨ 206

Under customary choice of law principles, the laws of the forum apply to matters of procedure and, save where limitations is part of the cause of action itself, a limitation on the time of suit is procedural and is governed by the law of the forum. *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Science, Inc.*, 2004, 858 A.2d 457. Action ⇨ 66; Limitation Of Actions ⇨ 2(1)

In the absence of exceptional circumstances compelling the trial court to make rulings off the cuff in the press and urgency of a trial, the judge should make findings of fact and conclusions of law before dismissing an action on inconvenient forum grounds. *Sampson v. Johnson*, 2004, 846 A.2d 278. Federal Courts ⇨ 1052.1

14. Burden of proof

Under District of Columbia law, presumption in favor of enforcing forum selection clause may be overcome by strong showing that: (1) clause's formation was tainted by fraud, undue influence, or overweening bargaining power; (2) enforcement of clause would effectively deprive plaintiff of remedy,

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or would deny her her day in court due to unfairness of selected forum or grave inconvenience; or (3) enforcement would contravene strong public policy of forum in which suit is brought. *Byrd v. Admiral Moving and Storage, Inc.*, 2005, 355 F.Supp.2d 234. Contracts ⇨ 141(1)

Defendant seeking dismissal on forum non conveniens grounds has burden of establishing that an adequate alternative forum exists. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 45

In seeking dismissal on grounds of forum non conveniens, Sweden and Swedish national telephone company met burden of establishing that adequate alternative forum existed for claims for damages, return of property, and cease and desist order asserted by consultancy firm and its shareholders due to Swedish corporation's alleged takeover of firm's Swedish operations, in that telephone company's general counsel averred that claims could be asserted in courts of Sweden and that defendants were subject to jurisdiction of appropriate Swedish courts, and firm did not address issue in opposing motions to dismiss. *BPA Intern., Inc. v. Kingdom of Sweden*, 2003, 281 F.Supp.2d 73. Federal Courts ⇨ 45

Where it is shown that neither party resides in the District of Columbia and the plaintiff's claim has arisen in another jurisdiction which has more substantial contacts with the cause of action, the burden normally allocated to the defendant to demonstrate why dismissal is warranted for forum non conveniens rests instead upon the plaintiff to show why it is not. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1052.1

To avoid dismissal on basis of forum non conveniens when neither party resides in the District of Columbia and the plaintiff's claim has arisen in another jurisdiction which has more substantial contacts with the cause of action, the plaintiff must show some reasonable justification for his institution of the action in the District of Columbia rather than in a state with which the suit is more significantly connected. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1052.1

An appellant complaining that the District of Columbia is an inconvenient forum has the heavy burden of showing that the trial court abused its broad discretion in denying the motion to dismiss on basis of forum non conveniens. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1066

After a trial has been held and judgment entered, the appellant will usually have to demonstrate substantial prejudice to succeed on claim that he was entitled to motion to dismiss on grounds of forum non conveniens. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1066

Party challenging forum selection clause must demonstrate: (1) the clause was induced by fraud or overreaching; (2) the contractually selected forum is so unfair and inconvenient as, for all practical purposes, to deprive the plaintiff of a remedy

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or of its day in court; or (3) enforcement would contravene a strong public policy of the forum where the action is filed. *Forrest v. Verizon Communications, Inc.*, 2002, 805 A.2d 1007. Federal Courts ⇨ 127(4)

Defendant has the burden of proving that the District is an inconvenient forum unless it is shown that neither party resides in the District and the plaintiff's claim has arisen in another jurisdiction which has more substantial contacts with the cause of action. *Blake v. Professional Travel Corp.*, 2001, 768 A.2d 568, certiorari denied 122 S.Ct. 923, 534 U.S. 1115, 151 L.Ed.2d 887. Federal Courts ⇨ 1051

Where none of the parties resided in the District of Columbia and the plaintiff's claim arises in another jurisdiction that has more substantial contacts with the cause of action, the burden normally allocated to the defendant to demonstrate why dismissal is warranted for forum non conveniens rests upon the plaintiff to show why it is not; the plaintiff bears the burden of showing some reasonable justification for instituting action in the forum state. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

16. Review—In general

While review by Court of Appeals of trial court's decision on motion to dismiss on ground of forum non conveniens is deferential, it includes, nevertheless, independent evaluation of private and public factors enumerated in *Gulf Oil*. *Dennis v. Edwards*, 2003, 831 A.2d 1006. Federal Courts ⇨ 1066

Pretrial certification for appellate review of trial court's denial of motion to dismiss on grounds of forum non conveniens is particularly appropriate, when a close question turns on the proper evaluation of the public interest factors. *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1062

The Court of Appeals reviews choice of law questions de novo. *Herbert v. District of Columbia*, 2002, 808 A.2d 776. Federal Courts ⇨ 1066

Although Court of Appeals reviews a decision to dismiss on grounds of forum non conveniens for abuse of discretion, trial court rulings in this area receive closer scrutiny than most other exercises of discretion, in that Court of Appeals conducts an independent analysis of the public and private interests involved in the case. *Blake v. Professional Travel Corp.*, 2001, 768 A.2d 568, certiorari denied 122 S.Ct. 923, 534 U.S. 1115, 151 L.Ed.2d 887. Federal Courts ⇨ 1066

In the end, when conducting forum non conveniens analysis, Court of Appeals asks whether the trial judge has reasonably evaluated the motion in light of the relevant factors. *Blake v. Professional Travel Corp.*, 2001, 768 A.2d 568, certiorari denied 122 S.Ct. 923, 534 U.S. 1115, 151 L.Ed.2d 887. Federal Courts ⇨ 1066

The deferential standard of review of a decision on a motion to dismiss for forum non conveniens is not a rubber-stamp; rather, the Court of Appeals applies close scrutiny to the specific factors identified and evaluated by the trial court and, once it is satisfied that the trial court took the proper factors into account, adopts a deferential approach in determining whether the trial court's decision fell within the broad discretion committed to it. *Future View, Inc. v. CritiCom, Inc.*, 2000, 755 A.2d 431. Federal Courts ⇨ 1066

17. — Decisions reviewable

Denials of forum non conveniens motions to dismiss are not immediately appealable as of right to Court of Appeals; overruling *Frost v. Peoples Drug Store*, 327 A.2d 810, *Jenkins v. Smith*, 499 A.2d 128 (per curiam), and *Jenkins v. Smith*, 535 A.2d 1367 (en banc). *Rolinski v. Lewis*, 2003, 828 A.2d 739. Federal Courts ⇨ 1062

SUBCHAPTER III. SERVICE OUTSIDE THE DISTRICT OF COLUMBIA.

§ 13-431. Manner and proof of service.

Notes of Decisions

1. In general

Strict construction of the statute permitting service outside the District of Columbia in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction demanded adequate proof that plaintiff obtained an order from a court in the Bahamas, as required by Bahamian law, authorizing service by publication.

Fox v. Ginsburg, 2001, 785 A.2d 660. Federal Courts ⇨ 1052.1

Representation by plaintiff's attorney that retained counsel in the Bahamas secured order permitting service by publication was insufficient proof of service in compliance with Bahamian law; certified copy of the order was required. *Fox v. Ginsburg*, 2001, 785 A.2d 660. Federal Courts ⇨ 1052.1

§ 13-434. Assistance to tribunals and litigants outside the District of Columbia.

Notes of Decisions

Documents issued 1

1. Documents issued

Any contacts that hospital had with District of Columbia residents through newspaper announcements were random and tenuous, for purposes of establishing personal jurisdiction in medical malpractice action under the long-arm statute, where announcements ran only in southern Maryland section of newspaper, which was distributed in Maryland, listed a local Maryland telephone number, and suggested that hospital was seeking volunteers from southern Maryland. *Peluzzo v. Leiboff*, 133 WLR 111 (Super. Ct. 2005).

Hospital's listing in local physician's directory was not advertising with an eye toward securing business from District of Columbia (DC) residents, for purposes of establishing personal jurisdiction in medical malpractice action under the long-arm statute, where there was no showing that hospital paid to be listed in directory or derived substantial

economic benefits from DC residents by being listed. *Peluzzo v. Leiboff*, 133 WLR 111 (Super. Ct. 2005).

Any contacts that hospital had with District of Columbia residents through either hospital's passive website or website of hospital's foundation, which could be accessed virtually anywhere in the world through the Internet, were random, tenuous, and insufficient to establish jurisdiction over hospital in medical malpractice action pursuant to long-arm statute. *Peluzzo v. Leiboff*, 133 WLR 111 (Super. Ct. 2005).

Physician's contacts, if any, with District of Columbia (DC) were too attenuated to establish personal jurisdiction in medical malpractice action under the long-arm statute, where there was no evidence physician decided to transfer patient to Maryland hospital, that substantial source of her income stemmed from Maryland hospital receiving patients from DC hospital, or that she paid to be listed on Maryland hospital's website. *Peluzzo v. Leiboff*, 133 WLR 111 (Super. Ct. 2005).

Chapter 4A

Interstate Depositions and Discovery; Uniform Act.

Section

- 13-441. Short title.
- 13-442. Definitions.
- 13-443. Issuance of subpoena.
- 13-444. Service of subpoena.

Section

- 13-445. Deposition, production, and inspection.
- 13-446. Application to Superior Court.
- 13-447. Uniformity of application and construction.
- 13-448. Application to pending actions.

UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

Table of Jurisdictions Wherein Act Has Been Adopted

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 13, Pt. II.

Jurisdiction	Laws	Effective Date	Statutory Citation
California	2008, c. 231	1-1-2010	West's Ann.Cal.C.C.P. §§ 2029.100 to 2029.900.
Colorado	2008, c. 68	8-5-2008	C.R.S.A. §§ 13-90.5-101 to 13-90.5-107.
Delaware	2010, c. 374	7-12-2010	10 Del.C. § 4311.
District of Columbia ...	2010, 18-147	5-22-2010	D.C. Official Code, 2001 Ed. §§ 13-441 to 13-448.
Idaho		7-1-2009	I.R.C.P., Rule 45(i).
Indiana	P.L.57-2010	6-30-2010	West's A.I.C. 34-44.5-1-1 to 34-44.5-1-11.
Kansas	Laws 2010, ch. 135	7-1-2010	K.S.A. 60-228a.
Kentucky	2008, c. 114	7-15-2008	KRS § 421.360.
Maryland	2008, c. 41	10-1-2008	Code, Courts and Judicial Proceedings, §§ 9-401 to 9-407.
Mississippi	2011, c. 347	7-1-2011	Miss. Code Ann., §§ 11-59-1 to 11-59-15.
Nevada	2011, c. 10	10-1-2011	NRS, §§ 53.100 to 53.200.

Jurisdiction	Laws	Effective Date	Statutory Citation
New Mexico		8-7-2009	NMRA, Rule 1-045.1.
New York	2010, c. 29	1-1-2011	McKinney's CPLR Law, § 3119.
North Carolina	2011-247	12-1-2011	NCGSA, §§ 1F-1 to 1F-7.
South Carolina	2010, Act 132	3-30-2010	Code 1976, §§ 15-47-100 to 15-47-160.
Tennessee	2008, c. 908	7-1-2008	T.C.A. §§ 24-9-201 to 24-9-207.
Utah	2008, c. 278	5-5-2008	U.C.A.1953, 78B-17-101 to 78B-17-302.
Virginia	2009, c. 701	3-30-2009 *	Code 1950, §§ 8.01-412.8 to 8.01-412.15.

* Date of approval.

§ 13-441. Short title.

This chapter may be cited as the "Uniform Interstate Depositions and Discovery Act".
(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Historical and Statutory Notes

Legislative History of Laws

Law 18-147, the "Uniform Interstate Depositions and Discovery Act of 2010", was introduced in Council and assigned Bill No. 18-426, which was referred to the Committee on Public Safety and the Judiciary. The bill was adopted on first and second readings on February 2, 2010, and March 2, 2010, respectively. Signed by the Mayor on March 18, 2010, it was assigned Act No. 18-330 and

transmitted to both Houses of Congress for its review. D.C. Law 18-147 became effective on May 22, 2010.

Uniform Law

This section is based upon § 1 of the Uniform Interstate Depositions and Discovery Act. See Vol. 13, Pt. II, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 13-442. Definitions.

For the purposes of this chapter, the term:

- (1) "Foreign jurisdiction" means a state other than the District of Columbia.
- (2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.
- (3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.
- (4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:
 - (A) Attend and give testimony at a deposition;
 - (B) Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or
 - (C) Permit inspection of premises under the control of the person.
- (6) "Superior Court" means the Superior Court of the District of Columbia.

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Historical and Statutory Notes

Legislative History of Laws

For Law 18-147, see notes following § 13-441.

Uniform Law

This section is based upon § 2 of the Uniform Interstate Depositions and Discovery Act. See

Vol. 13, Pt. II, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 13-443. Issuance of subpoena.

(a) To request issuance of a subpoena under this section, a party shall submit a foreign subpoena to the Clerk of the Superior Court. A request for the issuance of a subpoena under this chapter does not constitute an appearance in the courts of the District of Columbia.

(b) When a party submits a foreign subpoena to the Clerk of the Superior Court, the clerk, in accordance with the Rules of the Superior Court, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(c) A subpoena under subsection (b) of this section shall:

(A) Incorporate the terms used in the foreign subpoena; and

(B) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Historical and Statutory Notes

Legislative History of Laws

For Law 18-147, see notes following § 13-441.

Vol. 13, Pt. II, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Uniform Law

This section is based upon § 3 of the Uniform Interstate Depositions and Discovery Act. See

§ 13-444. Service of subpoena.

A subpoena issued by a Clerk of Superior Court under § 13-443 shall be served in compliance with § 11-942 and applicable rules of the Superior Court for the service of subpoenas.

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Historical and Statutory Notes

Legislative History of Laws

For Law 18-147, see notes following § 13-441.

Vol. 13, Pt. II, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Uniform Law

This section is based upon § 4 of the Uniform Interstate Depositions and Discovery Act. See

§ 13-445. Deposition, production, and inspection.

The rules of the Superior Court applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under § 13-443.

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Historical and Statutory Notes

Legislative History of Laws

For Law 18-147, see notes following § 13-441.

Vol. 13, Pt. II, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Uniform Law

This section is based upon § 5 of the Uniform Interstate Depositions and Discovery Act. See

§ 13-446. Application to Superior Court.

An application to the Superior Court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under § 13-443 shall comply with the Rules of the Superior Court and laws of the District and shall be submitted to the Superior Court.

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Historical and Statutory Notes

Legislative History of Laws

For Law 18-147, see notes following § 13-441.

Uniform Law

This section is based upon § 6 of the Uniform Interstate Depositions and Discovery Act. See

Vol. 13, Pt. II, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

§ 13-447. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Historical and Statutory Notes

Legislative History of Laws

For Law 18-147, see notes following § 13-441.

Vol. 13, Pt. II, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Uniform Law

This section is based upon § 7 of the Uniform Interstate Depositions and Discovery Act. See

§ 13-448. Application to pending actions.

This chapter applies to requests for discovery in cases pending on [May 22, 2010]. (May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Historical and Statutory Notes

Legislative History of Laws

For Law 18-147, see notes following § 13-441.

Vol. 13, Pt. II, Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

Uniform Law

This section is based upon § 8 of the Uniform Interstate Depositions and Discovery Act. See

TITLE 14

PROOF.

Chapter	Section
1. Evidence Generally; Depositions.	14-101
3. Competency of Witnesses.	14-301
5. Documentary Evidence.	14-507
7. Absence for Seven Years.	14-701

Chapter 1

Evidence Generally; Depositions.

Section	Section
14-101. Evidence under oath; affirmation in lieu of oath; perjury.	14-102. Impeachment of witnesses.

§ 14-101. Evidence under oath; affirmation in lieu of oath; perjury.

Historical and Statutory Notes

Miscellaneous Notes

Section 26 of D.C. Law 15-354 provides that Title 14 is designated Title 14 of the District of Columbia Official Code.

Notes of Decisions

Relevancy 4

1. In general

A mere proffer is not evidence. In re Ko.W., 2001, 774 A.2d 296. Federal Courts ⇨ 1052.1

A finding as to a critical disputed fact cannot be made on the basis of an unsubstantiated proffer. In re Ko.W., 2001, 774 A.2d 296. Federal Courts ⇨ 1052.1

Anonymous detective who provided orientation information to the grand jury, after it was empaneled but before it considered distribution of cocaine case against defendant, should have been under oath, as background information he provided about the behavior of typical narcotics users and sellers was evidence. Williams v. U.S., 2000, 757 A.2d 100. Grand Jury ⇨ 36.6

Any defendant is entitled to insist that all information presented to the grand jury be provided only by witnesses who are under the solemnity of an oath. Williams v. U.S., 2000, 757 A.2d 100. Grand Jury ⇨ 36.6

Error was harmless in allowing anonymous detective to provide orientation information to the grand jury, after it was empaneled but before it considered distribution of cocaine case against defendant, without his being sworn; the violation had no substantial influence on the grand jury's deci-

sion to indict. Williams v. U.S., 2000, 757 A.2d 100. Criminal Law ⇨ 1166(2)

4. Relevancy

To be relevant, evidence must tend to make the existence or nonexistence of a fact more or less probable than would be the case without that evidence. Butts v. U.S., 2003, 822 A.2d 407. Criminal Law ⇨ 338(1)

A defendant's right to pursue a particular line of cross-examination is circumscribed by general principles of relevance. Resper v. U.S., 2002, 793 A.2d 450, certiorari denied 124 S.Ct. 274, 540 U.S. 890, 157 L.Ed.2d 163, rehearing denied 124 S.Ct. 1133, 540 U.S. 1143, 157 L.Ed.2d 958. Witnesses ⇨ 270(1)

Relevant evidence is that which tends to make the existence or nonexistence of a fact more or less probable than would be the case without that evidence. Resper v. U.S., 2002, 793 A.2d 450, certiorari denied 124 S.Ct. 274, 540 U.S. 890, 157 L.Ed.2d 163, rehearing denied 124 S.Ct. 1133, 540 U.S. 1143, 157 L.Ed.2d 958. Criminal Law ⇨ 338(1)

For evidence to be "relevant," it must be related logically to the fact that it is offered to prove, the fact sought to be established by the evidence must be material, and the evidence must be adequately probative of the fact it tends to establish. Foreman v. U.S., 2002, 792 A.2d 1043. Criminal Law ⇨ 338(1)

A trial court's ruling concerning the relevance of evidence rests within the discretion of the trial court and will be upset only upon a showing of abuse. *Foreman v. U.S.*, 2002, 792 A.2d 1043. Criminal Law ⇨ 338(1); Criminal Law ⇨ 1153.3

Unless evidence of a witness's fear and/or intimidation of witnesses is closely tied and probative as

to a particular defendant, or a defendant opens the door to such evidence, the evidence should not be admitted. *Foreman v. U.S.*, 2002, 792 A.2d 1043. Criminal Law ⇨ 338(7)

§ 14-102. Impeachment of witnesses.

United States Supreme Court

Hearsay rule,

Confessions and admissions,

Self-incrimination, prisoners, refusal to make admission of criminal history required for participation in sexual abuse treatment program, immunity from prosecution, see *McKune v. Lile*, 2002, 122 S.Ct. 2017, 536 U.S. 24, 153 L.Ed.2d 47, on remand 299 F.3d 1229.

Unavailability of declarant,

Testimonial nature,

Confrontation clause, out-of-court statements of witnesses, testimonial nature, reliability, unavailability of witness and prior cross-examination requirements, see *Crawford v. Washington*, U.S.Wash.2004, 124 S.Ct. 1354, 541 U.S. 36, 158 L.Ed.2d 177.

Notes of Decisions

Collateral issues 3.5

Construction and application ½

Credibility of witness 9.5

Hearsay 10.5

Impeachment, generally ¾

Prior identification 10.6

½. Construction and application

Statute treating as substantive evidence a prior statement regarding an identification of a person made after perceiving the person is not limited to identifications made at a showup, lineup, or photo identification. *Sparks v. U.S.*, 2000, 755 A.2d 394. Criminal Law ⇨ 421(6)

¾. Impeachment, generally

The bias of a witness may be a crucial component in the jury's assessment of that witness' credibility, and thus bias is always a proper subject of cross-examination. *Stewart v. U.S.*, 2005, 881 A.2d 1100, certiorari denied 126 S.Ct. 2348, 547 U.S. 1174, 164 L.Ed.2d 859. Witnesses ⇨ 372(1)

Bias or testimonial motivation is always a proper subject of cross-examination; however, examiner must have a reasonable factual foundation or at least a well-reasoned suspicion that the circumstances indicating bias might be true. *Joyner v. U.S.*, 2003, 818 A.2d 166, certiorari denied 124 S.Ct. 2058, 541 U.S. 1005, 158 L.Ed.2d 521. Criminal Law ⇨ 2042; Criminal Law ⇨ 2051

Grand jury testimony of government's eyewitness in murder case, showing that she lied either to the police or the grand jury with respect to another murder that she allegedly observed, would have been relevant impeachment material for defendant's use on cross-examination, as it could have lessened the jurors' trust in her testimony regarding the murder that defendant allegedly committed. *Bennett v. U.S.*, 2002, 797 A.2d 1251. Witnesses ⇨ 344(5)

Grand jury testimony of government's eyewitness in murder case, showing that she lied either to the police or the grand jury with respect to another murder that she allegedly observed, would not be cumulative if defendant were allowed to use it for impeachment purposes, even though eyewitness was otherwise impeached with prior convictions and evidence of drug-related activities. *Bennett v. U.S.*, 2002, 797 A.2d 1251. Criminal Law ⇨ 675; Witnesses ⇨ 344(5)

Questions posed on cross-examination of defense witness who denied defendant's involvement in charged drug transaction for which witness had entered guilty plea, as to whether witness was nervous and whether she was aware of consequences of being a "snitch," was permissible; line of inquiry supported an inference that witness had motive to deny defendant's involvement, and it did not specifically link her fear to defendant. *Parker v. U.S.*, 2002, 797 A.2d 1245. Witnesses ⇨ 372(2)

Among the valid objectives of cross-examination is the impeachment of a witness by demonstrating bias. *Foreman v. U.S.*, 2002, 792 A.2d 1043. Witnesses ⇨ 372(1)

The law generally prohibits impeachment of a witness with specific instances of conduct for the sole purpose of attacking the witness' credibility. *Foreman v. U.S.*, 2002, 792 A.2d 1043. Witnesses ⇨ 344(1)

The bias of a witness is always relevant in assessing a witness' credibility. *Foreman v. U.S.*, 2002, 792 A.2d 1043. Witnesses ⇨ 363(1)

3. Admissions

Requirement of corroborating circumstances warranting admission of statements against penal interest plainly goes beyond minimal corroboration, for the circumstances must "clearly" indicate the trustworthiness of the statement; nevertheless, the standard is not unrealistically severe. *Ingram*

§ 14–102

Note 3

v. U.S., 2005, 885 A.2d 257. Criminal Law ⇨ 405.18(1)

Witness's oral jailhouse confession to defendant's attorney was adequately corroborated, for purposes of determining whether confession was admissible under hearsay exception for statements against penal interest; witness was on scene, smoking marijuana and drinking with victim and defendant, according to attorney, witness indicated that he had compelling motive to kill victim and that he proposed to finish the job following his release from jail, and material tending to corroborate witness's confession was contained in his grand jury testimony, notwithstanding witness's denial before grand jury that he committed crime. *Ingram v. U.S.*, 2005, 885 A.2d 257. Criminal Law ⇨ 405.18(2)

Trial judge's differentiation between a statement to defendant's attorney and a statement to a law enforcement officer, for purposes of determining whether witness's confession to defendant's attorney was admissible under hearsay exception for statements against penal interest, was erroneous as a matter of law; witness's confession to attorney was at least as incriminating as one made to a law enforcement officer, and indisputably subjected witness to potential criminal prosecution and conviction. *Ingram v. U.S.*, 2005, 885 A.2d 257. Criminal Law ⇨ 405.18(2)

Rule of evidence governing admission of hearsay as a declaration against penal interest requires three-step inquiry to ascertain: (1) whether the declarant, in fact, made a statement; (2) whether the declarant is unavailable; and (3) whether corroborating circumstances clearly indicate the trustworthiness of the statement. *Ingram v. U.S.*, 2005, 885 A.2d 257. Criminal Law ⇨ 405.18(1)

Ruling that precluded defendant in robbery prosecution from cross-examining alleged accomplice, who testified against his will pursuant to a grant of immunity, about a "promise" from the government regarding his sentencing was not abuse of discretion, where alleged accomplice testified on direct examination that he had rejected government's offer without asking for details and also denied receiving any government promises or "assurances" after he refused to testify voluntarily. *Ifelowo v. U.S.*, 2001, 778 A.2d 285. Witnesses ⇨ 372(2)

Admitting hearsay as a statement against penal interest requires a fact-intensive determination of the surrounding circumstances and, in particular, trustworthiness of the statement. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Criminal Law ⇨ 405.18(1)

To admit hearsay as a declaration against penal interest, the trial judge must undertake a three-step inquiry to ascertain (1) whether the declarant, in fact, made a statement; (2) whether the declarant is unavailable; and (3) whether corroborating circumstances clearly indicate the trustworthiness of the statement. *Doret v. U.S.*, 2000, 765 A.2d 47,

certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Criminal Law ⇨ 405.18(1)

Street level drug dealer's statements about the defendant's payment dispute with the murder victim, another drug runner, lacked guarantees of trustworthiness and were inadmissible under the confrontation clause and the hearsay exception for statements against penal interest; part of the police officer's narration of the statements and related conversations centered on the dispute between the victim and defendant and did not tend to expose the dealer to criminal liability, the defendant's alleged debt to the dealer revealed a bias, and the trial court improperly looked at the results of the police investigation, rather than circumstances that would prompt the dealer to deflect attention from himself. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Criminal Law ⇨ 405.18(2); Criminal Law ⇨ 662.8

The trustworthiness of a hearsay statement allegedly against penal interest is determined primarily by analysis of two elements: the probable veracity of the in-court witness and the reliability of the out-of-court declarant. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Criminal Law ⇨ 405.18(1)

In order to determine whether the corroboration factor has been met for a hearsay statement allegedly against penal interest, the trial court may look at the time the statement was made and to whom it was made, the existence of corroborating evidence in the case, and the extent to which the declaration is truly against the declarant's penal interest. *Doret v. U.S.*, 2000, 765 A.2d 47, certiorari denied 121 S.Ct. 1980, 532 U.S. 1030, 149 L.Ed.2d 772. Criminal Law ⇨ 405.18(1)

Admissions of a party opponent or "statements of the defendant" exception to hearsay rule operates on theory that declarant can refute admission or explain its circumstances by taking the stand. *McCoy v. U.S.*, 2000, 760 A.2d 164, certiorari denied 121 S.Ct. 1636, 532 U.S. 987, 149 L.Ed.2d 496, certiorari denied 121 S.Ct. 2257, 533 U.S. 909, 150 L.Ed.2d 243, certiorari denied 122 S.Ct. 227, 534 U.S. 900, 151 L.Ed.2d 163, certiorari denied 122 S.Ct. 486, 534 U.S. 1005, 151 L.Ed.2d 399. Criminal Law ⇨ 410.10; Criminal Law ⇨ 410.12

3.5. Collateral issues

Defense witness's testimony about defendant's dishonesty in his relationship with her was collateral, and thus, extrinsic evidence was not admissible to impeach witness. *Rowland v. U.S.*, 2004, 840 A.2d 664. Witnesses ⇨ 405(1)

Status of safety policy of vice unit of which the allegedly suicidal victim was a member was not collateral, and thus, extrinsic evidence was admissible to contradict witness on the matter; status of unit was independently relevant to issue of whether victim's violation of policy was serious enough to contribute to her supposed despondency. *Rowland v. U.S.*, 2004, 840 A.2d 664. Witnesses ⇨ 405(1)

Witness's testimony that defendant had made suicidal gestures with his service weapon similar to suicidal gestures that defendant attributed to victim was a non-collateral matter, and thus, extrinsic evidence was admissible to contradict witness on the matter; trial court reasonably could have deemed such evidence to be independently admissible on question whether defendant was drawing on his own experience to fabricate his claims about victim. *Rowland v. U.S.*, 2004, 840 A.2d 664. Witnesses ⇨ 405(1)

Issue of whether victim had made a suicidal gesture, as defense witness testified, was not a collateral matter, and thus, prosecution was entitled to present extrinsic evidence that witness had made prior inconsistent statements about matter; matter bore on whether victim actually did commit suicide in defendant's apartment as he claimed. *Rowland v. U.S.*, 2004, 840 A.2d 664. Witnesses ⇨ 383

Extrinsic evidence is non-collateral, and thus admissible to contradict witness, when it relates to a so-called "linchpin" fact; under this prong of test, for purposes of impeachment a part of witness's story may be attacked where as a matter of human experience, he could not be mistaken about that fact if thrust of his testimony on historical merits was true. *Rowland v. U.S.*, 2004, 840 A.2d 664. Witnesses ⇨ 405(1)

Matter is non-collateral, and extrinsic evidence consequently admissible to contradict witness, if matter is itself relevant to a fact of consequence on historical merits of case. *Rowland v. U.S.*, 2004, 840 A.2d 664. Witnesses ⇨ 405(1)

Party may not present extrinsic evidence to impeach witness on collateral issues. *Rowland v. U.S.*, 2004, 840 A.2d 664. Witnesses ⇨ 405(1)

4. Inconsistent statements—In general

Victim's prior statements before grand jury that identified defendants as robbers were admissible under statute stating that prior inconsistent statement is not regarded as hearsay if declarant testifies at trial and is subject to cross-examination, and if prior statement was made under oath subject to penalty of perjury, where court allowed prosecutor to confront victim with his prior grand jury testimony when victim testified that he could not remember having recognized the two robbers, victim admitted at trial that he was not at all hesitant in his identifications when testifying under oath before grand jury and that, barely week before trial, he had not expressed any confusion or uncertainty about who robbers were, victim acknowledged that, in all of his conversations with prosecutor before trial, he had identified robbers as defendants, and both defense attorneys cross-examined victim about inconsistency between his testimony and his prior statements of identification. *Lewis v. U.S.*, 2010, 996 A.2d 824. Criminal Law ⇨ 405.19

When a witness testifies under oath and adopts a statement not made under oath, that prior statement becomes substantive evidence. *Tyer v. U.S.*, 2006, 912 A.2d 1150. Criminal Law ⇨ 405.19

Where the alibi witness knows that the defendant is represented by counsel, no inference of fabricated testimony can be drawn from the witness's failure to inform the authorities of the information in her possession, because the witness might reasonably presume that it was sufficient for her to relate her knowledge to the attorney retained or appointed to represent the defendant. *Matthews v. U.S.*, 2006, 892 A.2d 1100. Witnesses ⇨ 347

A prior inconsistent statement is insufficient to preclude the introduction of a co-defendant's testimony when it becomes available. *Smith v. U.S.*, 2002, 809 A.2d 1216. Witnesses ⇨ 316

Audio recording of assault victim's grand jury testimony was admissible to impeach the victim, in prosecution for assault with intent to kill while armed, where prosecution confronted victim with his grand jury testimony, gave him an opportunity to explain or deny his prior inconsistent statements, and afforded defendant the opportunity to cross-examine the victim. *McConaughy v. U.S.*, 2002, 804 A.2d 334. Witnesses ⇨ 379(9); Witnesses ⇨ 388(8)

Evidence of a witness' generalized fear, not specifically a fear of the defendant, may be admissible, in the court's discretion, to show bias or motive when the witness has previously withheld information or makes conflicting statements. *Parker v. U.S.*, 2002, 797 A.2d 1245. Witnesses ⇨ 363(1)

On an attempt to impeach a witness's testimony because of an omission in prior statement, the trial court is asked to simply decide whether the prior statement failed to mention a material circumstance presently testified to, which it would have been natural to mention in the prior statement. *Mindombe v. U.S.*, 2002, 795 A.2d 39, certiorari denied 123 S.Ct. 1355, 537 U.S. 1234, 155 L.Ed.2d 200, post-conviction relief denied 2003 WL 25279053. Witnesses ⇨ 386

Prior inconsistent statement that government's principal witness wrote during plea proceeding in federal court, which was a sworn factual statement of his participation in defendants' fraudulent scheme to use Water and Sewer Authority (WASA) equipment for their own purposes, was properly admitted as substantive evidence; witness was on stand when statement was offered into evidence by the government for impeachment purposes, and since statement was introduced at conclusion of witness's direct testimony, defense attorneys had opportunity to use it during cross-examination. *Bell v. U.S.*, 2002, 790 A.2d 523. Criminal Law ⇨ 405.19

While witness's testimony that her reluctance to testify consistently with her grand jury testimony in drug and murder prosecution was because she was afraid, and that the only reason she was testifying was because the prosecutor came to get her and that she never wanted to participate in the proceedings was relevant in addressing defense counsel's allegation that the witness had been intimidated into giving false testimony by the government, witness's further testimony that she was

reluctant to testify and had changed her testimony because she was fearful of defendants, was substantially more prejudicial than probative. *Gordon v. U.S.*, 2001, 783 A.2d 575, appeal after new trial 881 A.2d 557, certiorari denied 126 S.Ct. 1132, 546 U.S. 1112, 163 L.Ed.2d 892. Witnesses ⇨ 396(1)

In the absence of statutory preclusion, there was nothing in area of Fifth Amendment jurisprudence preventing Government's use of legally obtained pre-trial statements of rape defendant for impeachment purposes. *Bobb v. U.S.*, 2000, 758 A.2d 958, certiorari denied 121 S.Ct. 832, 531 U.S. 1099, 148 L.Ed.2d 713. Witnesses ⇨ 390.1

Where impeachment is designed to correct contradictory statements in defendant's direct testimony at trial, burden on a defendant's right to testify at trial, as a result of likely possibility that prior inconsistent testimony from a suppression hearing will be introduced as impeachment at trial, is outweighed by necessity of probing trustworthiness of evidence at trial. *Bobb v. U.S.*, 2000, 758 A.2d 958, certiorari denied 121 S.Ct. 832, 531 U.S. 1099, 148 L.Ed.2d 713. Witnesses ⇨ 390.1

Aggravated assault victim's prior statements identifying the defendant were admissible as substantive evidence, even though the victim was uncertain of, or recanted, the prior identification at trial; the victim testified and was subject to cross-examination and knew the defendant for at least twenty years, and the identifications were reliable and trustworthy. *Sparks v. U.S.*, 2000, 755 A.2d 394. Criminal Law ⇨ 421(6)

Details of assault victim's prior inconsistent statements identifying the defendant were admissible through the testimony of law enforcement officers to impeach the victim after he testified that he could not identify the assailant. *Sparks v. U.S.*, 2000, 755 A.2d 394. Witnesses ⇨ 380(5.1)

5. — Laying foundation for proof of inconsistent statements

The prosecutor is required to lay a proper foundation for impeachment of an alibi witness with evidence of witness's pretrial silence, which may be accomplished by first demonstrating that the witness was aware of the nature of the charges pending against the defendant, had reason to recognize that he possessed exculpatory information, had a reasonable motive for acting to exonerate the defendant and, finally, was familiar with the means to make such information available to law enforcement authorities. *Matthews v. U.S.*, 2006, 892 A.2d 1100. Witnesses ⇨ 351

Under 1995 amendment to statute governing impeachment of witnesses, there are two requirements for the use of a prior inconsistent statement as substantive evidence: (1) that the witness be confronted on the witness stand with the prior inconsistent statement, and (2) that the opposing party be given an opportunity to cross-examine the witness concerning the statement. *Bell v. U.S.*, 2002, 790 A.2d 523. Criminal Law ⇨ 405.19

Defendant charged in triple murder was not entitled to cross-examine prosecution witness concerning her earlier arrest on charges related to

gun possession, even though those charges were dropped after police officer amended charges on police report, thus creating confusion as to proper charges, and even though same officer was on scene of triple murder when victim gave police witness's name; while defendant theorized that witness may have falsified testimony in return for continued favorable treatment in triple murder investigation, defendant failed to proffer any evidence of any ongoing relationship between witness and officer or of how witness might have benefitted from her earlier contact with him. *Crutchfield v. U.S.*, 2001, 779 A.2d 307. Witnesses ⇨ 373

A trial court does not abuse its discretion by precluding cross-examination to show bias where the connection between the facts cited by defense counsel and the proposed line of questioning is too speculative to support the questions. *Crutchfield v. U.S.*, 2001, 779 A.2d 307. Witnesses ⇨ 373

7. — Witnesses who may be impeached by inconsistent statements

Murder defendant did not exhibit bad faith by calling lead detective as witness, and thus was not precluded on that basis from impeaching detective's denial of having coached key witness with a letter provided by prosecutor to defense counsel, advising that lead detective was being investigated concerning allegations that she had coached witnesses in another case to be untruthful; questioning of lead detective helped defendant highlight the fact that key witness had lied to investigators and had implicated defendant only once there was a plea deal for witness containing a sentencing reduction for him. *Smith v. U.S.*, 2011, 26 A.3d 248. Witnesses ⇨ 363(2)

Government witness' grand jury testimony, which was given under oath and which conflicted with his testimony during cross-examination at murder trial, was admissible as nonhearsay prior inconsistent statement, both for impeachment purposes and as substantive evidence. *Tyer v. U.S.*, 2006, 912 A.2d 1150. Criminal Law ⇨ 405.19; Witnesses ⇨ 379(9)

Cross-examination of an alibi witness regarding their failure to have brought alibi or other exculpatory information to attention of law enforcement is permissible only where the circumstances are such that the witness' normal and natural course of conduct would have been to go to the authorities and furnish the exculpatory information, and typically, this threshold is viewed as depending primarily on the existence of a close relationship between the witness and the defendant. *Matthews v. U.S.*, 2006, 892 A.2d 1100. Witnesses ⇨ 347

State was not precluded from using eyewitness's testimony from first trial that she remembered testifying for grand jury to lay foundation for introduction of grand jury testimony as prior inconsistent statement that she saw defendant shoot victim, in order to rebut testimony at second trial that she could not remember any events surrounding shooting after she suffered head injuries and series of strokes. *Mercer v. U.S.*, 2004, 864 A.2d

110, certiorari denied 125 S.Ct. 1425, 543 U.S. 1188, 161 L.Ed.2d 191. Witnesses ⇨ 388(1)

Government was entitled, in murder prosecution arising from drive-by shooting, to call driver of getaway as a witness, even though government could reasonably expect that driver would testify contrary to earlier statement in which he identified defendants as the two gunmen; in such a situation, impeachment with prior statement was permissible and proper. *Johnson v. U.S.*, 2003, 820 A.2d 551, amended on rehearing, certiorari denied 124 S.Ct. 1895, 541 U.S. 980, 158 L.Ed.2d 481. Witnesses ⇨ 380(5.1)

Fact that co-defendant had made statement at his plea proceeding that was inconsistent with defendant's innocence was insufficient to overcome defendant's right to call co-defendant to testify; the prior statement could have been used to impeach co-defendant if his trial testimony was inconsistent, and it was for the factfinder to assess the co-defendant's credibility based upon his testimony and any impeaching evidence. *Smith v. U.S.*, 2002, 809 A.2d 1216. Witnesses ⇨ 2(1)

8. — Effect of impeachment by inconsistent statements

Government witness' grand jury testimony which adopted witness' second statement to police implicating defendant, and the second statement to police, were admissible as nonhearsay prior consistent statements, to rebut defense counsel's assertion during cross-examination of witness that prosecutor had exercised improper influence over witness. *Tyer v. U.S.*, 2006, 912 A.2d 1150. Witnesses ⇨ 414(2)

Generally, evidence showing the bias or motivation of a witness may be relevant in assessing a witness' credibility, however, it is the responsibility of the trial judge, in the exercise of his or her discretion, to exclude otherwise admissible evidence if its probative value is substantially outweighed by the danger of unfair prejudice. *Gordon v. U.S.*, 2001, 783 A.2d 575, appeal after new trial 881 A.2d 557, certiorari denied 126 S.Ct. 1132, 546 U.S. 1112, 163 L.Ed.2d 892. Criminal Law ⇨ 338(6)

While it may be proper to admit evidence to explain the specific behavior of a witness, such as inconsistent statements, delay in testifying, or unusual courtroom demeanor, evidence concerning a witness' fear tends to be extremely prejudicial because it appeals to the passions of the jury and may cause the jury to base its decision on something other than the rule of law. *Gordon v. U.S.*, 2001, 783 A.2d 575, appeal after new trial 881 A.2d 557, certiorari denied 126 S.Ct. 1132, 546 U.S. 1112, 163 L.Ed.2d 892. Criminal Law ⇨ 338(6); Criminal Law ⇨ 338(7)

If a motion for a new trial is based on the recantation of a witness, the trial court first determines the credibility of the recantation and that witness's trial testimony; only if the recantation is credible need the court determine the effect that the recantation would have had on the jury. *Gaither v. U.S.*, 2000, 759 A.2d 655, mandate re-

called and corrected 816 A.2d 791. Criminal Law ⇨ 942(2)

9. Prior arrests and convictions

Evidence of one crime is inadmissible to prove disposition to commit crime, from which the jury may infer that the defendant committed the crime charged. *McFarland v. U.S.*, 2003, 821 A.2d 348. Criminal Law ⇨ 368.5

Evidence that \$774 was found on defendant's person at time of arrest for a single drug sale only a few minutes earlier was admissible on cocaine distribution charge to complete the story of the crime by proving its immediate context; that amount of money did not inherently reflect a prior bad act and thus was not propensity evidence, defendant was free to offer jury an innocent explanation, and he was also free to request instruction restricting relevance of the money to whether he knowingly and intentionally distributed drugs at time and place charged. *McFarland v. U.S.*, 2003, 821 A.2d 348. Criminal Law ⇨ 368.21; Criminal Law ⇨ 373.2

Arrests are the proper subject of cross-examination of a character witness, not to impeach the credibility of the defendant, if he testifies, but to test the probative value of the witness' testimony. *Di Giovanni v. U.S.*, 2002, 810 A.2d 887. Witnesses ⇨ 274(2)

The trial court enjoys broad discretion to limit or preclude entirely the cross-examination of character witness regarding the defendant's prior convictions. *Di Giovanni v. U.S.*, 2002, 810 A.2d 887. Witnesses ⇨ 274(2)

Character witness properly could be questioned regarding defendant's prior arrest for assault with intent to kill if defendant chose to introduce evidence of his character for peacefulness. *Di Giovanni v. U.S.*, 2002, 810 A.2d 887. Criminal Law ⇨ 378

A witness may be cross-examined on a prior bad act that has not resulted in a criminal conviction, and thereby impeached, only where: (1) the examiner has a factual predicate for the question, and (2) the bad act bears directly upon the veracity of the witness in respect to the issues involved in the trial. *Riddick v. U.S.*, 2002, 806 A.2d 631, post-conviction relief denied 2004 WL 4966334. Witnesses ⇨ 344(2)

Home purchaser's prior bad act in filing a fraudulent affidavit in support of his motion to proceed in forma pauperis in the action against vendor and real estate agents could be used to impeach purchaser's credibility as a witness; the false affidavit was the factual predicate for the questioning, purchaser's willingness to give false information in affidavit bore directly on his credibility as witness, and the affidavit was related to the litigation against vendor and real estate agents. *Dean v. Garland*, 2001, 779 A.2d 911, certiorari denied 122 S.Ct. 2591, 536 U.S. 924, 153 L.Ed.2d 780. Witnesses ⇨ 336

Prior bad act of home purchaser, in overstating in mortgage loan application the amount on deposit in bank account, could be used to impeach purchas-

er's credibility as a witness in action against vendor and real estate agents; the loan application was the factual predicate for the questioning, purchaser's willingness to give false information in the credit application bore directly on her credibility as witness, and the prior bad act was related to the transaction underlying the litigation. *Dean v. Garland*, 2001, 779 A.2d 911, certiorari denied 122 S.Ct. 2591, 536 U.S. 924, 153 L.Ed.2d 780. Witnesses ⇨ 336

A witness may be impeached by questions concerning prior bad conduct relevant to credibility. *Dean v. Garland*, 2001, 779 A.2d 911, certiorari denied 122 S.Ct. 2591, 536 U.S. 924, 153 L.Ed.2d 780. Witnesses ⇨ 344(1)

When the prior bad conduct of a witness does not rise to the level of a criminal conviction, two requirements must be met before such conduct can be used to impeach the credibility of the witness: (1) the examiner must have a factual predicate for the question, and (2) the bad act must bear directly upon the veracity of the witness in respect to the issues involved in the trial. *Dean v. Garland*, 2001, 779 A.2d 911, certiorari denied 122 S.Ct. 2591, 536 U.S. 924, 153 L.Ed.2d 780. Witnesses ⇨ 344(1)

Prosecutor had good faith belief he could establish prior convictions for felony carrying a dangerous weapons (CDW), as factual predicate for impeaching defendant on cross-examination in prosecution for assault with dangerous weapon by asking about prior convictions, where prosecutor had based his questions on Pretrial Services Agency report indicating that defendant had two prior felony CDW convictions, though in fact defendant had been previously convicted of carrying a pistol without a license, unregistered firearm, and unlawful possession of ammunition. *Thomas v. U.S.*, 2001, 772 A.2d 818, certiorari denied 125 S.Ct. 233, 543 U.S. 913, 160 L.Ed.2d 193. Criminal Law ⇨ 2046

9.5. Credibility of witness

Letter provided by prosecutor to murder defendant's attorney, advising that lead detective in the case was being investigated concerning allegations that detective had coached witnesses in another case to be untruthful, was admissible in murder prosecution as impeachment evidence to expose detective's potential credibility problems and bias in favor of the prosecution, where defense counsel repeatedly asked detective whether she had coached a key witness in present case and detective denied having done so. *Smith v. U.S.*, 2011, 26 A.3d 248. Witnesses ⇨ 374(1)

10. Prior consistent statements

Hearsay testimony from friend of witness, regarding whether witness told friend that defendants were the individuals who kidnapped victim, was not admissible under the prior consistent statement exception to the hearsay rule; when witness testified for the prosecution he identified defendants as the men who abducted victim, but when he described the abduction to his friend the night it occurred he stated that he had never seen the men who abducted victim before and did not

know them. *Randolph v. U.S.*, 2005, 882 A.2d 210. Criminal Law ⇨ 405.19

Prior consistent statements may be admitted to rehabilitate a witness in at least two exceptional situations, namely, (1) where the witness has been impeached with a portion of a statement and the rest of the statement contains relevant information that could be used to meet the force of the impeachment, and (2) where there is a charge of recent fabrication. *Jacobs v. U.S.*, 2004, 861 A.2d 15, recalled and vacated 886 A.2d 510. Witnesses ⇨ 414(2)

The rule barring the introduction of prior consistent statements is designed to prevent the jury from learning that a witness has given the same account out of court that he or she gave on the stand. *Jacobs v. U.S.*, 2004, 861 A.2d 15, recalled and vacated 886 A.2d 510. Witnesses ⇨ 414(2)

The trial court's allowing of the prosecutor's questions to witnesses, which drew the attention of the witnesses to their prior trial testimony, was not an abuse of discretion; the prosecutor's questions did not result in improper bolstering or the admission of prior consistent statements since the prosecutor was not relying on out of court statements made by the witnesses. *Jacobs v. U.S.*, 2004, 861 A.2d 15, recalled and vacated 886 A.2d 510. Criminal Law ⇨ 2040

Trial court has broad discretion to permit party to introduce witness's prior consistent statements to rebut suggestion of recent fabrication by witness, if prior statements were made at a time when, considering all circumstances, witness did not have motive to fabricate. *Rowland v. U.S.*, 2004, 840 A.2d 664. Witnesses ⇨ 414(2)

Impeachment of witness with his or her prior inconsistent statements does not open door to introduction of any and all prior consistent statements that witness may have made; repetition does not imply veracity. *Rowland v. U.S.*, 2004, 840 A.2d 664. Witnesses ⇨ 414(2)

Officers' prior consistent statements before grand jury were admissible to rebut suggestion, on cross-examination, of recent fabrication by officers about defendant's remarks on night of victim's death. *Rowland v. U.S.*, 2004, 840 A.2d 664. Witnesses ⇨ 414(2)

Exclusion of prior consistent statements is intended to avoid the prejudice of unfairly bolstering the witness' credibility. *Porter v. U.S.*, 2003, 826 A.2d 398, amended on denial of rehearing. Witnesses ⇨ 318

Cross-examination of complainant is allowed on similar prior allegations if they were fabricated; since Constitution does not require confrontation of witnesses with irrelevant evidence, the very applicability of Confrontation Clause depends on falsity of complainant's prior allegations being false, and cross-examination is required constitutionally only where the prior allegations are shown convincingly to be false. *Velasquez v. U.S.*, 2002, 801 A.2d 72, certiorari denied 123 S.Ct. 396, 537 U.S. 963, 154 L.Ed.2d 319. Criminal Law ⇨ 662.7

10.5. Hearsay

An unavailable witness's grand jury testimony is admissible as substantive evidence at trial. *Mercer v. U.S.*, 2004, 864 A.2d 110, certiorari denied 125 S.Ct. 1425, 543 U.S. 1188, 161 L.Ed.2d 191. Criminal Law ⇨ 543(1)

In order to hold that a statement qualifies as an excited, or spontaneous utterance, the trial court must find that it satisfies three requirements: (1) the presence of a serious occurrence which causes a state of nervous excitement or physical shock in the declarant; (2) a declaration made within a reasonably short period of time after the occurrence so as to assure that the declarant has not reflected upon his statement or premeditated or constructed it; and (3) the presence of circumstances, which in their totality suggest spontaneity and sincerity of the remark. *Williams v. U.S.*, 2004, 859 A.2d 130. Criminal Law ⇨ 363

When a witness testifies under oath and adopts a prior statement not made under oath, that prior statement becomes substantive evidence. *Williams v. U.S.*, 2004, 859 A.2d 130. Criminal Law ⇨ 405.19

Complainant's testimony that she told defendant during telephone calls that he was violating civil protection order (CPO) was not hearsay in criminal contempt hearing; testimony was not elicited to prove that defendant violated CPO but, rather, to show that he was aware of its existence and requirements. In re *Dixon*, 2004, 853 A.2d 708. Protection Of Endangered Persons ⇨ 105

"Hearsay" is a statement, other than one made by the declarant while testifying at a trial, offered to prove the truth of the matter asserted. In re *Dixon*, 2004, 853 A.2d 708. Criminal Law ⇨ 419(1)

An out-of-court statement is not hearsay if it is offered for a purpose other than to prove the truth of the matter asserted. In re *Dixon*, 2004, 853 A.2d 708. Criminal Law ⇨ 419(2)

The classic present sense impression relates contemporaneous events or conditions as they are perceived by the observer's senses, for purposes of the present sense impression exception to the hearsay rule. *Hallums v. U.S.*, 2004, 841 A.2d 1270. Criminal Law ⇨ 419(2.15)

Statements describing or explaining events which the declarant is observing at the time he or she makes the declaration or immediately thereafter are admissible under the hearsay exception for present sense impression, and the declarant need not be available for cross-examination to admit a statement under the exception. *Hallums v. U.S.*, 2004, 841 A.2d 1270. Criminal Law ⇨ 419(2.15)

Hearsay statements may be admitted under the excited utterance exception if the following prerequisites are met: (1) the presence of a serious occurrence which causes a state of nervous excitement or physical shock in the declarant; (2) a declaration made within a reasonably short period of time after the occurrence so as to assure that the declarant has not reflected upon his statement or premeditated or constructed it; and (3) the

presence of circumstances, which in their totality suggest spontaneity and sincerity of the remark. *Hallums v. U.S.*, 2004, 841 A.2d 1270. Criminal Law ⇨ 363

Medical expert's testimony that victim's medical records indicated that victim had told medical personnel that defendant "had sexually abused her," that she "was molested at his home after school," and that "it happened a lot of times" was admissible under prior identification exception to hearsay rule, in prosecution for first-degree child sexual abuse; no details of the incidents themselves were divulged in the statements. *Brown v. U.S.*, 2004, 840 A.2d 82. Criminal Law ⇨ 421(6)

Detective's testimony that victim told her, during interview at police headquarters, that "she was assaulted by [defendant]" was admissible under prior identification exception to hearsay rule, in prosecution for first-degree child sexual abuse. *Brown v. U.S.*, 2004, 840 A.2d 82. Criminal Law ⇨ 421(6)

The prior identification exception to the hearsay rule does not apply to detailed accounts of the actual crime, and the declarant's description of the offense is admissible under such hearsay exception only to the extent necessary to make the identification understandable to the jury. *Brown v. U.S.*, 2004, 840 A.2d 82. Criminal Law ⇨ 421(6)

To admit testimony under the prior identification exception to the hearsay rule, the identifying witness must be available for cross-examination. *Brown v. U.S.*, 2004, 840 A.2d 82. Criminal Law ⇨ 421(6)

The rationale behind the prior identification exception to the hearsay rule is that the earlier identification has greater probative value than an identification made in the courtroom after the suggestions of others and the circumstances of the trial may have intervened to create a fancied recognition in the witness' mind. *Brown v. U.S.*, 2004, 840 A.2d 82. Criminal Law ⇨ 421(6)

The prior identification exception to the hearsay rule allows the admission of out-of-court statements through the testimony of either the identifier or a third party who was present when the identification was made. *Brown v. U.S.*, 2004, 840 A.2d 82. Criminal Law ⇨ 421(6)

Statements from rape victim's granddaughter and from police officer regarding victim's out of court identification of defendant at "show-up" identification were not hearsay, where granddaughter and officer testified at trial, they were subject to cross-examination concerning the statements, and the statements were in regards to an identification of a person made after perceiving the person. *Redmond v. U.S.*, 2003, 829 A.2d 229, certiorari denied 125 S.Ct. 119, 543 U.S. 914, 160 L.Ed.2d 196, habeas corpus dismissed 2006 WL 2583650. Criminal Law ⇨ 421(6)

Testimony that an accused adopted statements of another person as his own may be admitted in evidence as an exception to the hearsay rule if it clearly appears that the accused understood and unambiguously assented to the statements. Fore-

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Note 10.5

man v. U.S., 2002, 792 A.2d 1043. Criminal Law Ⓒ 410.30

To constitute an admission by silence, for purposes of the adoptive admission exception to the hearsay rule, the statement must be made in the defendant's presence and hearing, and the defendant must actually understand what was said and have an opportunity to deny it. *Foreman v. U.S.*, 2002, 792 A.2d 1043. Criminal Law Ⓒ 410.35

As a threshold matter, before admitting a statement under the adoptive admission exception to the hearsay rule, trial judge must make preliminary determination whether jury could reasonably conclude that defendant unambiguously adopted another person's incriminating statement. *Foreman v. U.S.*, 2002, 792 A.2d 1043. Criminal Law Ⓒ 413.65

Erroneous admission of hearsay in the form of insurance companies' letters stating that the companies never issued a policy to the alleged tortfeasor entitled an automobile insurer to a new trial in a suit to recover uninsured motorist (UM) benefits. *Allstate Ins. Co. v. Curtis*, 2001, 781 A.2d 725. New Trial Ⓒ 35

Insurance companies' letters stating that the companies never issued a policy to the alleged tortfeasor were inadmissible under the business records exception to the hearsay rule in an action to recover uninsured motorist (UM) benefits; the insured received the letters in response to her attorney's inquiries to four companies and never laid a foundation through a competent witness. *Allstate Ins. Co. v. Curtis*, 2001, 781 A.2d 725. Evidence Ⓒ 357

Once hearsay evidence is admitted without objection, it may be properly considered by the trier of fact and given its full probative value. *Dean v. Garland*, 2001, 779 A.2d 911, certiorari denied 122 S.Ct. 2591, 536 U.S. 924, 153 L.Ed.2d 780. Federal Courts Ⓒ 1052.1

There was no plain error as to admission of Housing and Urban Development (HUD) inspection report in home purchasers' action against vendor and real estate agent, even if the report was hearsay; if purchasers had made a timely hearsay objection in the trial court, the author of the report could have been subpoenaed and made available to testify at trial. *Dean v. Garland*, 2001, 779 A.2d 911, certiorari denied 122 S.Ct. 2591, 536 U.S. 924, 153 L.Ed.2d 780. Federal Courts Ⓒ 1064

Statement concerning a "beef" involving the defendant as a reason why the victim thought that the defendant was one assailant was not hearsay where it was offered to show what effect it had on the listener. *Sparks v. U.S.*, 2000, 755 A.2d 394. Criminal Law Ⓒ 419(1.10)

10.6. Prior identification

Witness's statement to police on night of shooting that defendant shot victim was admissible under prior identification exception to rule against hearsay, in murder prosecution, as the statement identified defendant as the shooter, and witness, as the declarant, was available for cross-examination.

PROOF

Graham v. U.S., 2011, 12 A.3d 1159, certiorari denied 132 S.Ct. 363, 181 L.Ed.2d 230. Criminal Law Ⓒ 421(6)

Court of Appeals would decline to reach on defendant's appeal of his murder conviction issue of whether witness's statement to police on night of shooting identifying defendant as the shooter had a sufficient foundation to be admitted as a prior statement of identification, as defendant failed to address the requisite basis or foundation of a statement of identification in his appeal, instead characterizing witness's statement as a prior consistent statement. *Graham v. U.S.*, 2011, 12 A.3d 1159, certiorari denied 132 S.Ct. 363, 181 L.Ed.2d 230. Criminal Law Ⓒ 1043(3)

Child sexual abuse victim adopted videotape of her interview at the child advocacy center (CAC), and thus the tape was admissible as substantive evidence, during prosecution for first-degree child sexual abuse; victim signed or initialed the tape while under oath before the grand jury, and she generally affirmed the contents of the tape and confirmed numerous specific facts stated therein. *Koonce v. U.S.*, 2010, 993 A.2d 544. Criminal Law Ⓒ 405.12; Criminal Law Ⓒ 438(8)

Grand jury testimony by defendant's sister, which she disavowed at trial, that she saw defendant with a firearm four days after murder was admissible as substantive evidence to show defendant's possession of what reasonably could have been the murder weapon soon after fatal shooting. *Thomas v. U.S.*, 2009, 978 A.2d 1211, certiorari denied 131 S.Ct. 196, 178 L.Ed.2d 118, certiorari denied 131 S.Ct. 282, 178 L.Ed.2d 185. Criminal Law Ⓒ 539(1)

In cases involving alleged prior identifications, as in other cases, decisions as to the admissibility of evidence generally are left to the sound discretion of the trial judge. *Randolph v. U.S.*, 2005, 882 A.2d 210. Criminal Law Ⓒ 421(6); Criminal Law Ⓒ 661

Hearsay testimony from friend of witness, regarding whether witness told friend that defendants were the individuals who kidnapped victim, was not admissible under the prior identification exception to the hearsay rule; friend of witness testified that witness never described the victim's abductors as anything other than two "dudes" or "guys," and witness provided no information on the abductors such as their race, height, weight, or physical characteristics. *Randolph v. U.S.*, 2005, 882 A.2d 210. Criminal Law Ⓒ 421(6)

Under the prior-identification exception to the hearsay rule, out-of-court descriptions or identifications are admissible as long as the identifying witness is available for cross-examination and the statements do not constitute a detailed account of the actual crime. *Brown v. U.S.*, 2005, 881 A.2d 586. Criminal Law Ⓒ 421(6)

An identification that is part of an out-of-court statement but does not satisfy statute allowing such identifications to be admissible when the declarant testifies at trial and is available for cross-examination is hearsay, may be admissible none-

theless under an exception to the hearsay rule. *Hallums v. U.S.*, 2004, 841 A.2d 1270. Criminal Law Ⓒ 421(6)

Evidence of prior out-of-court identification is admissible through the testimony of identifier or witnesses present at prior identification. *Johnson v. U.S.*, 2003, 820 A.2d 551, amended on rehearing, certiorari denied 124 S.Ct. 1895, 541 U.S. 980, 158 L.Ed.2d 481. Criminal Law Ⓒ 421(6)

Evidence of eyewitness' prior out-of-court statement identifying defendants as the two gunmen in drive-by shooting was admissible without limitation, in murder prosecution arising from that incident in which that eyewitness testified, to prove gunmen's identities. *Johnson v. U.S.*, 2003, 820 A.2d 551, amended on rehearing, certiorari denied 124 S.Ct. 1895, 541 U.S. 980, 158 L.Ed.2d 481. Criminal Law Ⓒ 421(6)

Virtually entire prior statement by driver of getaway car, portions of which identified defendants as the gunmen in drive-by shooting, was admissible in murder prosecution arising from that incident in which driver testified; context was necessary in order for the identifications to be probative, and driver's entire description of the circumstances was relevant to the identification. *Johnson v. U.S.*, 2003, 820 A.2d 551, amended on rehearing, certiorari denied 124 S.Ct. 1895, 541 U.S. 980, 158 L.Ed.2d 481. Criminal Law Ⓒ 428

11. Instructions, generally

Trial court was under no duty, in murder prosecution arising from drive-by shooting, to instruct jury to view with "special suspicion" a prior statement by driver of getaway car that identified defendant as one of the two gunmen, where defendant failed to request such an instruction. *Johnson v. U.S.*, 2003, 820 A.2d 551, amended on rehearing, certiorari denied 124 S.Ct. 1895, 541 U.S. 980, 158 L.Ed.2d 481. Criminal Law Ⓒ 824(5)

12. Review—In general

Interpretation of statute on evidence of an identification made after perceiving a person is a legal question reviewed de novo. *Sparks v. U.S.*, 2000, 755 A.2d 394. Criminal Law Ⓒ 1139

13. — Admission of evidence, review

Grand jury testimony of state's witness inculpating murder defendants was properly admitted at trial as substantive evidence, as well as to impeach witness, who claimed to be unable to remember events at issue, pursuant to statute providing that a statement is not hearsay if declarant testifies at trial and is subject to cross-examination concerning the statement and the statement is inconsistent with declarant's testimony, and was given under oath subject to penalty of perjury at a trial, hearing, or other proceeding, as witness testified at defendants' trial and was available for cross-examination about his prior grand jury testimony, which was under oath, and that testimony was inconsistent with his claimed memory loss at trial. *Diggs v. U.S.*, 2011, 28 A.3d 585. Criminal Law Ⓒ 405.19; Witnesses Ⓒ 379(9)

Accident report prepared by employee of general contractor was not admissible to show prior consistent statements to rebut theory that construction worker had fabricated his story about a workplace injury for purposes of negligence action against consultant that was hired by owner of building to oversee construction site, where neither the report, nor any of the alleged statements upon which the report was based, was a prior consistent statement made by construction worker. *Presley v. Commercial Moving & Rigging, Inc.*, 2011, 25 A.3d 873. Witnesses Ⓒ 414(2)

Even assuming defendant had right, under Confrontation Clause, to recross-examine government witness about witness' prior consistent statements admitted as nonhearsay substantive evidence after, rather than during, government's redirect examination, any error was harmless, in prosecution for second-degree murder; jury must have been aware from counsel's argument that the defense considered witness' first statement to police to be truthful and all other statements and testimony, including the prior consistent statements in witness' second statement to police, to be unreliable, and reasonable fact-finder could have found government's proof of guilt, which included electrical cord wrapped around victim's throat and findings by fire department that an arson and homicide occurred, to be compelling. *Tyer v. U.S.*, 2006, 912 A.2d 1150. Criminal Law Ⓒ 1168(2)

Any possible error in allowing prosecutor to impeach defendant's grandmother with evidence regarding her failure to provide alibi information to authorities at defendant's pretrial detention hearing did not substantially sway jury's guilty verdict, in trial for armed carjacking and related crimes, in view of substantial evidence of defendant's guilt, victim's positive identification of defendant as one of perpetrators, grandmother gave alibi information promptly to defense counsel, and other alibi witness' testimony indicated that witnesses were not recounting what happened on evening in question. *Matthews v. U.S.*, 2006, 892 A.2d 1100. Criminal Law Ⓒ 1170.5(1)

Record was insufficient to determine whether any corroborating circumstances indicated trustworthiness of witness's oral jailhouse confession to defendant's attorney, for purposes of determining whether confession was admissible under hearsay exception for statements against penal interest, and thus, remand was warranted. *Ingram v. U.S.*, 2005, 885 A.2d 257. Criminal Law Ⓒ 1181.5(7)

Trial court's error in allowing government to question defense witness concerning his bias toward victim in murder prosecution, which was based on claim that witness's friend had been previously killed in front of victim's home, was harmless; although prosecutor expressed skepticism that witness did not know the location where his friend was shot, there was no further mention of shooting of witness's friend or attempt to show witness's bias during trial. *Joyner v. U.S.*, 2003, 818 A.2d 166, certiorari denied 124 S.Ct. 2058, 541 U.S. 1005, 158 L.Ed.2d 521. Criminal Law Ⓒ 1170.5(1)

Admission of audio recording of assault victim's grand jury testimony to impeach the victim, with redactions only of objectionable material and prior consistent statements, was not an abuse of discretion in prosecution for assault with intent to kill while armed; playing the tape line-by-line would have been difficult technically, victim was unable to read the transcript and refused to listen to the recording, and his claim that he had been "forced" to give the grand jury testimony made the context of the prior inconsistent statements relevant. *McConaughy v. U.S.*, 2002, 804 A.2d 334. Witnesses ⇨ 391

Allowing prosecution to introduce, on rebuttal, certification of defendant's prior convictions for carrying a pistol without a license (CPWL), unregistered firearm, and unlawful possession of ammunition, was not plain error in prosecution for assault with dangerous weapon, though prosecutor's impeachment of defendant on cross-examination had been based on the factual predicate of prior convictions for felony carrying a dangerous weapons (CDW), because CDW was closely related to CPWL. *Thomas v. U.S.*, 2001, 772 A.2d 818, certiorari denied 125 S.Ct. 233, 543 U.S. 913, 160 L.Ed.2d 193. Criminal Law ⇨ 1036.1(8)

14. — Examination of witnesses, review

Trial court's failure to curtail sua sponte prosecutor's elicitation from detective of details of out-of-court statements of state's witness to detective identifying murder defendants as the persons who had confessed their commission of the murder directly to witness other than the identification itself during re-direct examination, which details might very well have exceeded the limits of the prior identification exception to rule against hearsay, did not constitute plain error, particularly where defendant's cross-examination of detective arguably had opened the door to the admission of further details, and where prejudice was less likely because those details had been adduced earlier in the trial through witness's grand jury testimony. *Diggs v. U.S.*, 2011, 28 A.3d 585. Criminal Law ⇨ 1036.5

Out-of-court statements of state's witness to detective identifying murder defendants as the persons who had confessed their commission of the murder directly to witness were admissible at trial pursuant to prior identification exception to rule against hearsay, as witness was available at trial for cross-examination concerning his statements, and witness knew or had a relationship with defendants prior to the perceived event. *Diggs v. U.S.*, 2011, 28 A.3d 585. Criminal Law ⇨ 421(6)

Any error of trial court by admitting statement four-year old witness to victim's murder made to detective the day after the murder, identifying defendant as the murderer, was not plain error, in prosecution of defendant that resulted in a conviction for second-degree murder, as the witness testified at trial, was available for cross-examination, and, though witness at trial did not recall his statements to detective, witness identified defen-

dant as the killer at trial. *Melendez v. U.S.*, 2011, 26 A.3d 234. Criminal Law ⇨ 1036.5

Government's redirect examination of government witness did not raise any new issues and instead merely expanded on issues already raised, during defense counsel's cross-examination, regarding prosecutor allegedly pressuring witness to incriminate defendant, and thus, defendant was not entitled under Confrontation Clause to recross-examine the witness about witness' prior consistent statements admitted as nonhearsay substantive evidence after, rather than during, redirect examination. *Tyer v. U.S.*, 2006, 912 A.2d 1150. Criminal Law ⇨ 662.7

Despite witness' repudiation of her grand jury testimony relating defendant's inculpatory statement, defendant had opportunity to cross-examine witness, as required, under Confrontation Clause and statute governing impeachment of witnesses, for admission of witness' grand jury testimony, where government had granted witness immunity, even though counsel decided not to cross-examine her, apparently for tactical reasons. *Hartridge v. U.S.*, 2006, 896 A.2d 198, certiorari denied 127 S.Ct. 1503, 549 U.S. 1272, 167 L.Ed.2d 242. Criminal Law ⇨ 662.9

Once the alibi witness has furnished her exculpatory information to defense counsel, it arguably can no longer be maintained that her normal and natural course of conduct would have been to go to the authorities with her alibi information, in order to allow impeachment of the witness for her failure to provide alibi or exculpatory information to authorities, and where that is so, it is incumbent on the trial court to consider carefully on the record before it whether the line of questioning at issue is sufficiently probative to justify in the face of objection its use in determining the witness' credibility. *Matthews v. U.S.*, 2006, 892 A.2d 1100. Witnesses ⇨ 347

An appellate court reviews a trial court's rulings placing limitations on cross-examination for an abuse of discretion. *Bennett v. U.S.*, 2005, 876 A.2d 623, certiorari denied 126 S.Ct. 1134, 546 U.S. 1123, 163 L.Ed.2d 914. Criminal Law ⇨ 1153.18(2)

A trial judge may not prohibit all cross-examination of a witness about an event that a jury might reasonably have found caused bias. *Blunt v. U.S.*, 2004, 863 A.2d 828. Witnesses ⇨ 372(1)

Because of the central role cross-examination for bias plays, the court must accord such cross-examination wide latitude and must not unduly restrict it. *Blunt v. U.S.*, 2004, 863 A.2d 828. Witnesses ⇨ 372(1)

Bias cross-examination of a main government witness is always a proper area of cross-examination and is relevant in assessing the witness' credibility and evaluating the weight of the evidence. *Blunt v. U.S.*, 2004, 863 A.2d 828. Witnesses ⇨ 372(1)

Error was not harmless beyond a reasonable doubt, in prosecution for robbery, as to violation of defendant's right under Confrontation Clause to

cross-examine witnesses regarding bias by failing to allow him to conduct any cross-examination of prosecution's key witness regarding criminal charge against witness which had been placed on "stet" docket in Maryland, which meant Maryland prosecutor had not elected to proceed on indictment but could later decide to proceed on it; jury's question to court during deliberations, regarding whether witness could be prosecuted in District of Columbia for participating in the robbery, illustrated jury's concern with witness' veracity and bias, jury acquitted defendant of greater offense of armed robbery, and witness was the only eyewitness to affirmatively identify defendant as the perpetrator. *Blunt v. U.S.*, 2004, 863 A.2d 828. Criminal Law ⇨ 1168(2)

Late disclosure of assault victim's statement to police that shooter had worn a mask was not prejudicial to defendant's right to impeach victim or officer to whom statement was made, where trial court allowed defense counsel to cross-examine both victim and officer outside presence of jury and determine whether he wished to recall them for re-cross-examination, and rather than recall them counsel chose to emphasize in closing argument negative implications of discrepancy between officer's testimony and victim's silence on the stand with respect to mask, as well as government's suppression of victim's prior statement. *Moore v. U.S.*, 2004, 846 A.2d 302. Criminal Law ⇨ 627.8(2)

Even when a defendant is attempting to impeach an accuser with evidence of bias, the trial court may, without violating the Confrontation Clause, impose reasonable limits on such cross-examination, based on concerns about confusion of the issues or interrogation that is repetitive or only marginally relevant. *Brown v. U.S.*, 2004, 840 A.2d 82. Criminal Law ⇨ 662.7

If the trial court has permitted enough cross-examination on an appropriate issue to satisfy the Sixth Amendment, any limitation on further cross-examination will be reviewed on appeal only for abuse of discretion. *Brown v. U.S.*, 2004, 840 A.2d 82. Criminal Law ⇨ 1153.18(2)

Trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. *Brown v. U.S.*, 2004, 840 A.2d 82. Criminal Law ⇨ 662.7

A defendant's right to pursue a particular line of cross-examination is circumscribed by general principles of relevance. *Bruce v. U.S.*, 2003, 820 A.2d 540. Witnesses ⇨ 270(1)

Trial court abused its discretion in murder prosecution by allowing government to question defense witness concerning his bias toward victim, where only proffer of witness's bias consisted of fact that a friend of witness's had been lovers with victim, and witness's friend had been killed on front steps of victim's home. *Joyner v. U.S.*, 2003,

818 A.2d 166, certiorari denied 124 S.Ct. 2058, 541 U.S. 1005, 158 L.Ed.2d 521. Witnesses ⇨ 373

Trial judge's limitation of cross-examination of witness for prosecution, who identified gun at trial as weapon he had sold to defendant, regarding witness' purported bias, which was alleged to have stemmed from defendant's employment discrimination complaint against witness' superior, was not error in robbery prosecution; proffer of bias was marginal, and thus, inadequate to require judge to permit proposed line of inquiry, and situation before trial judge was rife with potential for confusion of issue and for distraction of jury from question of whether defendant was innocent or guilty. *Coles v. U.S.*, 2002, 808 A.2d 485, certiorari denied 124 S.Ct. 346, 540 U.S. 931, 157 L.Ed.2d 237, post-conviction relief denied 2004 WL 4966338, post-conviction relief dismissed 2004 WL 4966336. Criminal Law ⇨ 662.7

Defendant failed to lay a proper foundation for cross-examination of government witness on whether she had been treated for substance abuse, and thus defendant was not entitled to question witness on the matter, where, upon trial court's sustaining of government's objection, defendant failed to explain the relevance or probative value of the question and its anticipated answer. *Williams v. U.S.*, 2002, 805 A.2d 919. Witnesses ⇨ 330(1)

A defendant's right to pursue a particular line of cross-examination is circumscribed by general principles of relevance. *Resper v. U.S.*, 2002, 793 A.2d 450, certiorari denied 124 S.Ct. 274, 540 U.S. 890, 157 L.Ed.2d 163, rehearing denied 124 S.Ct. 1133, 540 U.S. 1143, 157 L.Ed.2d 958. Witnesses ⇨ 270(1)

Prejudicial error may result from limiting a defendant's right to cross-examine a crucial government witness, especially a witness without whose testimony the government could not prove guilt. *Shorter v. U.S.*, 2001, 792 A.2d 228. Criminal Law ⇨ 1170.5(5)

Trial court's erroneous ex parte ruling that prosecution did not need to divulge to defense factual basis for government witness' possible bias, which was that witness' sons were under investigation for sexually abusing two of defendant's children, was not harmless, in prosecution for cruelty to children; witness' testimony as sole adult witness was significant, given that children expressed desire to be reunited with their siblings, there was evidence that children would lie at their mother's request, and children admitted that they had been instructed to testify against defendant in order to be reunited. *McCloud v. U.S.*, 2001, 781 A.2d 744. Criminal Law ⇨ 1166(10.10)

Under harmless error test, it must be clear beyond a reasonable doubt (1) that defendant would have been convicted without the witness' testimony, or (2) that the restricted line of inquiry would not have weakened the impact of the witness' testimony. *McCloud v. U.S.*, 2001, 781 A.2d 744. Criminal Law ⇨ 1170.5(1)

In reviewing the trial court's limitation on cross-examination for abuse of discretion, the Court of

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Note 14

Appeals considers whether meaningful cross-examination was precluded by the trial court's rulings. *Crutchfield v. U.S.*, 2001, 779 A.2d 307. Criminal Law ⇨ 1153.18(2)

Under *Kotteakos*, which is applied to those instances in which the defendant was not wholly deprived of an opportunity to cross-examine a witness, the test for harmless error is whether a reviewing court can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. *Villa v. District of Columbia*, 2001, 778 A.2d 309. Criminal Law ⇨ 1170.5(5)

Any error in trial court's failure to intervene, sua sponte, to prevent prosecutor from impeaching defendant by cross-examining him about his prior convictions, and to prevent prosecutor from arguing in closing and rebuttal that defendant had lied, was harmless, in prosecution for assault with dangerous weapon, where jury heard significant damaging testimony from defendant that he was a drug abuser who had been convicted of drug-related offenses. *Thomas v. U.S.*, 2001, 772 A.2d 818, certiorari denied 125 S.Ct. 233, 543 U.S. 913, 160 L.Ed.2d 193. Criminal Law ⇨ 1037.1(2)

15. — Instructions, review

There was no reasonable likelihood, in murder prosecution in which detective testified that defendant's sister had reported a statement by defendant inculcating himself and jointly tried co-defendant, that the omission of an unrequested instruction that detective's testimony was admissible only to impeach sister's trial testimony had a prejudicial effect on outcome of trial, as necessary to constitute plain error; detective's testimony was entirely duplicative of sister's properly

PROOF

admitted grand jury testimony. *Thomas v. U.S.*, 2009, 978 A.2d 1211, certiorari denied 131 S.Ct. 196, 178 L.Ed.2d 118, certiorari denied 131 S.Ct. 282, 178 L.Ed.2d 185. Criminal Law ⇨ 1038.2

Even if trial court erred when he instructed jury to consider whether or not victim had adopted videotape excerpts, describing what defendant had done to her, that were used to impeach her courtroom testimony that she did not know what defendant had done to her, defendant was not impermissibly prejudiced; having established that statements were adopted, fact that jury could have reconsidered whether adoption occurred or not only stood to benefit defendant. *Williams v. U.S.*, 2004, 859 A.2d 130. Criminal Law ⇨ 1172.2

Defendants could not, on appeal in murder prosecution arising from drive-by shooting, complain about instruction that erroneously allowed eyewitness' prior out-of-court identification of defendants as the gunmen to be used only to impeach eyewitness' credibility; instruction favored defendants and prejudiced the government. *Johnson v. U.S.*, 2003, 820 A.2d 551, amended on rehearing, certiorari denied 124 S.Ct. 1895, 541 U.S. 980, 158 L.Ed.2d 481. Criminal Law ⇨ 1172.7

Alleged error by trial court, in murder prosecution arising from drive-by shooting, in failing to instruct jury sua sponte to view with "special suspicion" a prior statement by driver of getaway car that identified defendant as one of the gunmen would be reviewed only for plain error, where defendant did not request such an instruction during the trial. *Johnson v. U.S.*, 2003, 820 A.2d 551, amended on rehearing, certiorari denied 124 S.Ct. 1895, 541 U.S. 980, 158 L.Ed.2d 481. Criminal Law ⇨ 1038.3

Chapter 3

Competency of Witnesses.

Section

- 14-301. Parties and other interested persons generally.
- 14-302. Testimony against deceased or incapable person.
- 14-303. Testimony of deceased or incapable person.
- 14-305. Competency of witnesses; impeachment by evidence of conviction of crime.

Section

- 14-306. Spouse or domestic partner.
- 14-307. Physicians and mental health professionals.
- 14-309. Clergy.
- 14-310. Domestic violence counselors.
- 14-311. Human trafficking counselors.

§ 14-301. Parties and other interested persons generally.

Notes of Decisions

Mental illness 5

2. Interest

Prosecutor was arguably precluded from impeaching defendant's grandmother regarding her

failure to provide alibi information to law enforcement authorities at pretrial detention hearing on prosecution for armed carjacking and related crimes, where grandmother had provided such information to defendant's appointed counsel. Mat-

thews v. U.S., 2006, 892 A.2d 1100. Witnesses ⇨ 347

Ruling that precluded defendant in robbery prosecution from cross-examining alleged accomplice, who testified against his will pursuant to a grant of immunity, about a "promise" from the government regarding his sentencing was not abuse of discretion, where alleged accomplice testified on direct examination that he had rejected government's offer without asking for details and also denied receiving any government promises or "assurances" after he refused to testify voluntarily. Ifelowo v. U.S., 2001, 778 A.2d 285. Witnesses ⇨ 372(2)

5. Mental illness

Trial court did not abuse its discretion in finding prosecution witness, who had been diagnosed with paranoid schizophrenia and recently hospitalized for psychiatric problems, competent to testify in prosecution for manslaughter while armed and related weapons offenses; witness did not display kinds of mental impairments that would suggest testimonial incapacity, witness demonstrated understanding of what it meant to testify truthfully and was oriented in time and place, and testimony of witness, although her memory was imperfect,

was responsive and her account of events at issue was coherent and consistent with recollections of other witnesses. Dorsey v. U.S., 2007, 935 A.2d 288. Witnesses ⇨ 41

In the absence of "ongoing manifestations" of hallucinations or other comparably serious present mental irregularities, a history of psychiatric problems and a current diagnosis of mental illness do not suffice to overcome the presumption against compelling an independent medical examination (IME) to assist the court in determining a witness's competency to testify. Dorsey v. U.S., 2007, 935 A.2d 288. Witnesses ⇨ 77

Trial court was capable of assessing competency of prosecution witness, who had been diagnosed with paranoid schizophrenia and recently hospitalized for psychiatric problems, without compelling her to undergo an independent medical examination (IME), in prosecution for manslaughter while armed and related weapons offenses; witness was examined under oath, witness did not exhibit distorted perceptions, incoherence or the like, and court and parties had hospital records of witness. Dorsey v. U.S., 2007, 935 A.2d 288. Witnesses ⇨ 77

§ 14-302. Testimony against deceased or incapable person.

Notes of Decisions

1. In general

Under District of Columbia law, testimony of condominium's owner that her deceased co-owner did not in fact make 50% contribution to condominium's mortgage payments, as indicated by his tax treatment for ownership of condominium, but rather wanted payments to appear to have been made in order to secure tax advantage, was barred by dead man's statute in owner's action against co-owner's estate seeking distribution of proceeds of sale of condominium. Building Services Unlimited Inc. v. Riley, 2002, 238 F.Supp.2d 255. Witnesses ⇨ 159(13)

2. Purpose

Under District of Columbia law, purpose of dead man's statute is to protect against potentially fraudulent suits based only on claimant's word that deceased was somehow obligated to claimant. Building Services Unlimited Inc. v. Riley, 2002, 238 F.Supp.2d 255. Witnesses ⇨ 125

3. Applicability of statute

Decedent's stepchildren, who were the previous beneficiaries of a trust that was part of decedent's estate, were substantially likely to prevail in breach of contract action so as to secure a constructive trust, as required to support issuance of a temporary injunction prohibiting trustee from withdrawing assets from the disputed trust to pay for litigation expenses in the action, despite trustee's contention that the dead man's statute barred imposition of a constructive trust; stepchildren of-

fered their own testimony regarding decedent's purported agreement concerning the disputed trust, and such testimony was corroborated so as to defeat the dead man's statute. In re Estate of Reilly, 2007, 933 A.2d 830. Trusts ⇨ 368

5. Burden of proof

When the claim of an inter vivos gift comes after the alleged donor had died, the gift must be proven by clear and convincing evidence. In re Estate of Delaney, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Gifts ⇨ 49(1)

Decedent's alleged common law wife did not establish that jointly-registered credit union account and cash management/stock brokerage account were intended as inter vivos gifts; credit union account agreement lacked signatures for joint and survivor election, decedent's will specifically bequeathed the account to alleged wife, thereby clearly indicating that decedent had not thought he had given her the account during his lifetime, funds in cash management/stock brokerage account were never delivered to alleged wife and instead were simply shifted by ledger entry into account alleged wife had opened with decedent's power of attorney, and decedent did not have habit of presenting alleged wife with large or expensive gifts while he was alive. In re Estate of Delaney, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Gifts ⇨ 49(5)

§ 14-303. Testimony of deceased or incapable person.

Notes of Decisions

In general 1

1. In general

Even assuming co-defendant's testimony at defendant's retrial contradicted witness's testimony at first trial, such contradiction did not preclude admission of witness's prior recorded testimony after witness was determined to be unavailable, at retrial for murder and associated weapons offenses. *Mercer v. U.S.*, 2004, 864 A.2d 110, certiorari denied 125 S.Ct. 1425, 543 U.S. 1188, 161 L.Ed.2d 191. Criminal Law ⇨ 543(1)

The Court of Appeals reviews a trial court's determination to admit or deny the admission of prior recorded testimony for abuse of discretion, and also treat the determination as a factual finding to be reversed only if it is plainly wrong or without evidence to support it. *Mercer v. U.S.*, 2004, 864 A.2d 110, certiorari denied 125 S.Ct. 1425, 543 U.S. 1188, 161 L.Ed.2d 191. Criminal Law ⇨ 1153.11; Criminal Law ⇨ 1158.9

State was entitled to use prior recorded testimony of three unavailable witnesses at retrial for murder and associated weapons offenses, where issues on retrial were substantially similar, as charges were identical, and witnesses were subject to cross-examination in first trial. *Mercer v. U.S.*, 2004, 864 A.2d 110, certiorari denied 125 S.Ct. 1425, 543 U.S. 1188, 161 L.Ed.2d 191. Criminal Law ⇨ 543(1)

Prior recorded testimony is admissible as an exception to the hearsay rule if the proponent establishes that: (1) the direct testimony of the declarant is unavailable; (2) the previous testimony was given under oath or affirmation in a legal proceeding; (3) the issues in the two proceedings were substantially the same; and (4) the party against whom the testimony is now offered had the opportunity to cross-examine the declarant at the former proceeding. *Mercer v. U.S.*, 2004, 864 A.2d 110, certiorari denied 125 S.Ct. 1425, 543 U.S. 1188, 161 L.Ed.2d 191. Criminal Law ⇨ 541; Criminal Law ⇨ 544

§ 14-305. Competency of witnesses; impeachment by evidence of conviction of crime.

Notes of Decisions

6. Due process

Government's failure to obtain and preserve the tape recording of defendant's telephone conversation to his former girlfriend did not constitute a *Brady* violation or deprive defendant of due process in prosecution for threatening another person, even though officer knew or should have known that defendant's telephone call to the victim was recorded, absent showing of prejudice to defendant or bad faith by government in not obtaining and preserving the recording; defendant did not assert that the tape recording would have been exculpatory. *Robinson v. U.S.*, 2003, 825 A.2d 318. Constitutional Law ⇨ 4594(6); Constitutional Law ⇨ 4594(8); Criminal Law ⇨ 2011

12. Admissibility of prior offenses, generally

Evidence of prior convictions of the former boyfriend of defendant's girlfriend for drug trafficking while armed and possession of a particular brand of pistol was relevant at a trial for assault with a deadly weapon (ADW) and possession of an unregistered firearm (UF) after a pistol of the same brand was found in the girlfriend's hallway closet; in light of the government's emphasis in argument that the pistol found in the closet bolstered a witness's testimony about the alleged ADW because it supported an inference that defendant had ready access to a gun, the prior-convictions evidence had some tendency to prove that defendant did not know about the gun or have ready access to it. *Hunter v. U.S.*, 2009, 980 A.2d 1158. As-

sault And Battery ⇨ 83(1); Criminal Law ⇨ 338(4); Weapons ⇨ 264

Even if otherwise meeting the test for admissibility as an exception to *Drew* rule, which restricts use of other crimes evidence, evidence must still be excluded if the danger of unfair prejudice resulting from its admission substantially outweighs its probative value. *Frye v. U.S.*, 2005, 926 A.2d 1085. Criminal Law ⇨ 368.13

Exceptions to *Drew* rule, which restricts use of other crimes evidence, permit a party to offer evidence for specified limited purposes; such evidence is usually restricted to proof of motive, intent, absence of mistake or accident, common scheme or plan, or identity. *Frye v. U.S.*, 2005, 926 A.2d 1085. Criminal Law ⇨ 368.4

Evidence of crimes, independent of the crime charged, is admissible for legitimate purposes, such as to prove motive, intent, absence of mistake or accident, a common scheme or plan, or identity of the person charged with the crime on trial. *Frye v. U.S.*, 2005, 926 A.2d 1085. Criminal Law ⇨ 368.4

Evidence of crimes, independent of the crime charged, are inadmissible to prove a defendant's disposition to commit the crime charged. *Frye v. U.S.*, 2005, 926 A.2d 1085. Criminal Law ⇨ 368.5

Evidence that \$774 was found on defendant's person at time of arrest for a single drug sale only a few minutes earlier was admissible on cocaine distribution charge to complete the story of the crime by proving its immediate context; that

amount of money did not inherently reflect a prior bad act and thus was not propensity evidence, defendant was free to offer jury an innocent explanation, and he was also free to request instruction restricting relevance of the money to whether he knowingly and intentionally distributed drugs at time and place charged. *McFarland v. U.S.*, 2003, 821 A.2d 348. Criminal Law ⇨ 368.21; Criminal Law ⇨ 373.2

Evidence of one crime is inadmissible to prove disposition to commit crime, from which the jury may infer that the defendant committed the crime charged. *McFarland v. U.S.*, 2003, 821 A.2d 348. Criminal Law ⇨ 368.5

Generally, evidence of other crimes is not admissible, but there are exceptions to that rule, including admission of such evidence to explain immediate circumstances surrounding offense charged. *Welch v. U.S.*, 2002, 807 A.2d 596, certiorari denied 123 S.Ct. 914, 537 U.S. 1132, 154 L.Ed.2d 821. Criminal Law ⇨ 372.55

Even when "other crimes" evidence is relevant to explain immediate circumstances surrounding charged offense, it may be excluded if its prejudicial effect substantially outweighs its probative value. *Welch v. U.S.*, 2002, 807 A.2d 596, certiorari denied 123 S.Ct. 914, 537 U.S. 1132, 154 L.Ed.2d 821. Criminal Law ⇨ 368.13; Criminal Law ⇨ 372.55

"Other crimes" evidence of defendant's drug dealing was relevant in murder prosecution to explain events leading up to murder, including why defendant came to home of victim's cousin and why victim gave defendant a ride to place where defendant allegedly stated drugs were hidden, and probative value of that evidence was not outweighed by prejudicial effect. *Welch v. U.S.*, 2002, 807 A.2d 596, certiorari denied 123 S.Ct. 914, 537 U.S. 1132, 154 L.Ed.2d 821. Criminal Law ⇨ 372.55

"Other crimes" evidence that defendant solicited sex from government witness for \$8.00 was relevant, in prosecution for murder of that witness' cousin that occurred only a few hours later, to explain events surrounding charged crime, including how defendant came to be at witness' home and to accept a ride from her cousin, and probative value of that evidence was not outweighed by prejudicial effect. *Welch v. U.S.*, 2002, 807 A.2d 596, certiorari denied 123 S.Ct. 914, 537 U.S. 1132, 154 L.Ed.2d 821. Criminal Law ⇨ 372.55

Drew rule generally prohibits the use of prior crimes or prior bad acts offered to prove a predisposition to commit charged offenses. *Curry v. U.S.*, 2002, 793 A.2d 479. Criminal Law ⇨ 368.5

Exceptions to *Drew* rule, which restricts use of other crimes evidence, permit a party to offer such evidence for specified limited purposes, e.g., proof of motive, intent, absence of mistake or accident, common scheme or plan, or identity. *Curry v. U.S.*, 2002, 793 A.2d 479. Criminal Law ⇨ 368.4

On a proffer of other crimes evidence, a trial judge must consider whether the evidence is probative on a material contested issue. *Curry v. U.S.*, 2002, 793 A.2d 479. Criminal Law ⇨ 368.8

The trial court must consider whether other crimes evidence, though offered pursuant to an exception, does not bear primarily on predisposition to commit a crime. *Curry v. U.S.*, 2002, 793 A.2d 479. Criminal Law ⇨ 368.5

Trial court, on a proffer of other crimes evidence, must inquire whether the other behavior is fairly attributable to the accused. *Curry v. U.S.*, 2002, 793 A.2d 479. Criminal Law ⇨ 374.20(1)

Evidence of a crime for which the accused is not on trial is inadmissible to prove disposition to commit crime, from which the jury may infer that the defendant committed the crime charged; other crimes evidence is admissible, however, when it is relevant and important to the issue of intent. *Riley v. U.S.*, 2002, 790 A.2d 538. Criminal Law ⇨ 368.5; Criminal Law ⇨ 371.27

For evidence of other crimes to be admissible, the defendant's intent must be genuinely in issue, not merely in the sense that it is an element of the offense, but in the sense that it is genuinely controverted. *Riley v. U.S.*, 2002, 790 A.2d 538. Criminal Law ⇨ 371.27

Where intent is not controverted in any meaningful sense, evidence of other crimes to prove intent is so prejudicial per se that it is inadmissible as a matter of law. *Riley v. U.S.*, 2002, 790 A.2d 538. Criminal Law ⇨ 371.27

Evidence of one crime is inadmissible to prove disposition to commit crime, from which the jury may infer that the defendant committed the crime charged; since the likelihood that juries will make such an improper inference is high, courts presume prejudice and exclude evidence of other crimes unless that evidence can be admitted for some substantial, legitimate purpose. *Coleman v. U.S.*, 2001, 779 A.2d 297. Criminal Law ⇨ 368.1; Criminal Law ⇨ 368.5

"Other crimes" evidence may be admitted where relevant to a wide range of issues, such as intent, identity, motive, absence of mistake or accident, or common scheme or plan, and where its probative value is not substantially outweighed by prejudice. *Coleman v. U.S.*, 2001, 779 A.2d 297. Criminal Law ⇨ 368.4; Criminal Law ⇨ 368.13

Courts proceed on the assumption that "other crimes" evidence is inadmissible. *Coleman v. U.S.*, 2001, 779 A.2d 297. Criminal Law ⇨ 368.1

"Other crimes" evidence, in form of testimony by defendant's sister on cross-examination by defense counsel, that defendant had set fires before in his father's house was inadmissible in prosecution for felony malicious destruction of property, alleging that defendant again set that house on fire. *Coleman v. U.S.*, 2001, 779 A.2d 297. Criminal Law ⇨ 368.17; Criminal Law ⇨ 373.12

13. Discretion of court

The trial court enjoys broad discretion to limit or preclude entirely the cross-examination of character witness regarding the defendant's prior convictions. *Di Giovanni v. U.S.*, 2002, 810 A.2d 887. Witnesses ⇨ 274(2)

The trial court has broad discretion in imposing reasonable limits on cross-examination to prevent, among other things, harassment, prejudice, confusion of the issues, or interrogation that is repetitive or only marginally relevant. *Riddick v. U.S.*, 2002, 806 A.2d 631, post-conviction relief denied 2004 WL 4966334. Witnesses ⇨ 267

Trial court is vested with discretion in controlling bias cross-examination. *Guzman v. U.S.*, 2001, 769 A.2d 785. Witnesses ⇨ 372(1)

Where a proper foundation has not been laid for bias cross-examination, the trial court may exercise its discretion to preclude the inquiry. *Guzman v. U.S.*, 2001, 769 A.2d 785. Witnesses ⇨ 373

The trial court is vested with broad discretion in deciding whether to permit cross examination of a witness regarding a prior bad act. *Wagner v. Georgetown University Medical Center*, 2001, 768 A.2d 546. Witnesses ⇨ 344(2)

In determining whether to permit cross examination of a witness on a prior bad act, the trial court should assess both the sufficiency of the examiner's factual predicate and the relevance of the prior bad act to the witness's veracity; the court should also evaluate whether the probative value of the proffered cross examination is substantially outweighed by the danger of unfair prejudice. *Wagner v. Georgetown University Medical Center*, 2001, 768 A.2d 546. Witnesses ⇨ 344(2)

Extent and scope of cross-examination are subject to broad discretion of trial judge. *Bobb v. U.S.*, 2000, 758 A.2d 958, certiorari denied 121 S.Ct. 832, 531 U.S. 1099, 148 L.Ed.2d 713. Witnesses ⇨ 267

Competency of a witness and credibility of a witness are two separate issues, and a competency finding is always made by the court. *Bryant v. U.S.*, 2004, 859 A.2d 1093. Criminal Law ⇨ 742(1); Witnesses ⇨ 79(3)

14. Acts not constituting "conviction" for impeachment purposes

A witness may be cross-examined on a prior bad act that has not resulted in a criminal conviction, and thereby impeached, only where: (1) the examiner has a factual predicate for the question, and (2) the bad act bears directly upon the veracity of the witness in respect to the issues involved in the trial. *Riddick v. U.S.*, 2002, 806 A.2d 631, post-conviction relief denied 2004 WL 4966334. Witnesses ⇨ 344(2)

Assault victim's expulsion from neighborhood stores for shoplifting did not bear directly on her veracity in respect to issues involved in the assault trial, and thus, victim could not be impeached through cross-examination regarding prior bad act of shoplifting which had not resulted in criminal conviction; there was no evidence that the manner in which victim shoplifted involved an element of deceit or falsification, as opposed to stealth. *Riddick v. U.S.*, 2002, 806 A.2d 631, post-conviction relief denied 2004 WL 4966334. Witnesses ⇨ 344(2)

When the prior bad conduct of a witness does not rise to the level of a criminal conviction, two requirements must be met before such conduct can be used to impeach the credibility of the witness: (1) the examiner must have a factual predicate for the question, and (2) the bad act must bear directly upon the veracity of the witness in respect to the issues involved in the trial. *Dean v. Garland*, 2001, 779 A.2d 911, certiorari denied 122 S.Ct. 2591, 536 U.S. 924, 153 L.Ed.2d 780. Witnesses ⇨ 344(1)

15. Prior arrests

Arrests are the proper subject of cross-examination of a character witness, not to impeach the credibility of the defendant, if he testifies, but to test the probative value of the witness' testimony. *Di Giovanni v. U.S.*, 2002, 810 A.2d 887. Witnesses ⇨ 274(2)

16. Juvenile arrests and convictions

The Sixth Amendment does not require the trial court to permit impeachment with juvenile adjudications unless they can be used to establish bias, not merely to challenge general credibility. *Walls v. U.S.*, 2001, 773 A.2d 424, certiorari denied 122 S.Ct. 1112, 534 U.S. 1149, 151 L.Ed.2d 1006. Criminal Law ⇨ 662.7

Evidence of a prior conviction usually is inadmissible to impeach general credibility if the conviction resulted from a juvenile adjudication. *Walls v. U.S.*, 2001, 773 A.2d 424, certiorari denied 122 S.Ct. 1112, 534 U.S. 1149, 151 L.Ed.2d 1006. Witnesses ⇨ 345(9)

A defendant's Sixth Amendment right to confront adverse witnesses with evidence of bias must prevail over the policy of protecting the anonymity of juvenile offenders. *Walls v. U.S.*, 2001, 773 A.2d 424, certiorari denied 122 S.Ct. 1112, 534 U.S. 1149, 151 L.Ed.2d 1006. Criminal Law ⇨ 662.7

Murder defendant was not entitled to present evidence of witness's juvenile adjudication for second degree murder for purposes of impeaching witness's credibility. *Walls v. U.S.*, 2001, 773 A.2d 424, certiorari denied 122 S.Ct. 1112, 534 U.S. 1149, 151 L.Ed.2d 1006. Witnesses ⇨ 345(9)

17. Criminal offenses admissible for impeachment purposes—In general

Government was permitted to use co-defendant's prior convictions, including his prior conviction for carrying a pistol without a license (CPWL), during his murder trial to impeach his credibility; prosecutor simply elicited co-defendant's admission that he had been convicted of three prior offenses after which the court instructed the jury on their limited use. *Hammond v. U.S.*, 2005, 880 A.2d 1066, certiorari denied 126 S.Ct. 2373, 547 U.S. 1184, 165 L.Ed.2d 287, certiorari denied 127 S.Ct. 374, 549 U.S. 931, 166 L.Ed.2d 231, denial of post-conviction relief affirmed 979 A.2d 26, habeas corpus denied 677 F.Supp.2d 286, habeas corpus denied 759 F.Supp.2d 49, appeal dismissed 2011 WL 2618210, rehearing en banc denied. Criminal Law ⇨ 673(3); Witnesses ⇨ 337(24)

The State presented sufficient evidence to establish defendant's prior assault conviction, and thus

the assault conviction created a "link" to defendant's prior murder conviction which allowed for the admission of the murder conviction as impeachment evidence; the State presented a certificate entitled "Warrant of Arrest" which stated defendant had been convicted of assault and sentenced to 30 days incarceration, and a notarized report from the National Crime Information Center (NCIC) which stated that defendant had been convicted of assault, and both documents referred to defendant's conviction occurring in the same court on the same date. *Haley v. U.S.*, 2002, 799 A.2d 1201. Witnesses ⇨ 359

20. — Theft offenses, criminal offenses admissible for impeachment purposes

Larceny or petty theft is a crime of stealth in most cases, not of deceit, and thus, evidence of such prior acts not resulting in conviction should usually be disallowed as impeachment evidence during cross-examination. *Riddick v. U.S.*, 2002, 806 A.2d 631, post-conviction relief denied 2004 WL 4966334. Witnesses ⇨ 344(2)

26. Practice and procedure, generally

The burden of establishing the existence of the prior conviction rests with the government; however, once the government has set forth a prima facie case, either by producing official documents or by providing other credible evidence, the burden of going forward shifts to the defendant who may present contrary evidence. *Haley v. U.S.*, 2002, 799 A.2d 1201. Criminal Law ⇨ 374.17

In order to overcome an objection to a question posed to expose bias, the questioner must proffer facts sufficient to show that the witness is biased in the manner asserted and to allow the trial court to determine whether the question is probative of bias. *Guzman v. U.S.*, 2001, 769 A.2d 785. Witnesses ⇨ 373

27. Cross-examination for purpose of impeachment concerning prior offenses

Trial court's imposed limit on defendant's impeachment of state's witness by only allowing witness to testify that he had taught victim how to sell drugs, rather than allowing victim to testify as to whether he had taught people younger than himself to sell drugs, did not violate defendant's Sixth Amendment right to confrontation in murder trial, where evidence was cumulative. *Samad v. U.S.*, 2002, 812 A.2d 226, certiorari denied 123 S.Ct. 1600, 538 U.S. 934, 155 L.Ed.2d 333. Criminal Law ⇨ 662.7

Victim's admission that she had been expelled from neighborhood stores for shoplifting established the factual predicate for cross-examining the victim about her act of shoplifting, as element for impeachment through cross-examination of witness regarding prior bad act that has not resulted in criminal conviction, in prosecution for assault. *Riddick v. U.S.*, 2002, 806 A.2d 631, post-conviction relief denied 2004 WL 4966334. Witnesses ⇨ 351

Prior bad acts probative of truthfulness or untruthfulness, about which a witness may be cross-examined and thereby impeached, are those char-

acterized by an element of deceit or deliberate interference with a court's ascertainment of truth. *Riddick v. U.S.*, 2002, 806 A.2d 631, post-conviction relief denied 2004 WL 4966334. Witnesses ⇨ 344(2)

Evidence of defendant's prior crime was admissible in armed robbery trial, after defendant's counsel put defendant's intent at issue during her opening statement, in which she argued that defendant did not know that his co-defendant was going to rob a shoe store; it was defense, not the prosecution, that raised the issue of defendant's intent, and trial court limited the prior crimes evidence to the fact that the defendant had been stopped in a car with the co-defendant a month earlier, but did not permit evidence that the earlier stop was for another robbery. *Riley v. U.S.*, 2002, 790 A.2d 538. Criminal Law ⇨ 371.48

Defendant charged in triple murder was not entitled to cross-examine prosecution witness concerning her earlier arrest on charges related to gun possession, even though those charges were dropped after police officer amended charges on police report, thus creating confusion as to proper charges, and even though same officer was on scene of triple murder when victim gave police witness's name; while defendant theorized that witness may have falsified testimony in return for continued favorable treatment in triple murder investigation, defendant failed to proffer any evidence of any ongoing relationship between witness and officer or of how witness might have benefitted from her earlier contact with him. *Crutchfield v. U.S.*, 2001, 779 A.2d 307. Witnesses ⇨ 373

A trial court does not abuse its discretion by precluding cross-examination to show bias where the connection between the facts cited by defense counsel and the proposed line of questioning is too speculative to support the questions. *Crutchfield v. U.S.*, 2001, 779 A.2d 307. Witnesses ⇨ 373

A witness may be cross-examined on a prior bad act that has not resulted in a criminal conviction only where (1) the examiner has a factual predicate for the question, and (2) the bad act bears directly upon the veracity of the witness in respect to the issues involved in the trial. *Wagner v. Georgetown University Medical Center*, 2001, 768 A.2d 546. Witnesses ⇨ 344(2)

Medical expert could be impeached with evidence that he had been censured by neurological surgery association, even though expert had one level of appeal of that censure remaining. *Wagner v. Georgetown University Medical Center*, 2001, 768 A.2d 546. Evidence ⇨ 560

Although the opportunity to cross-examine a witness is a fundamental right, which is guaranteed in a criminal trial through the confrontation clause of the Sixth Amendment, the extent and scope of cross-examination is committed to the sound discretion of the trial court. *Moore v. U.S.*, 2000, 757 A.2d 78. Criminal Law ⇨ 662.7

31. Review

Defendant's failure to testify at trial did not waive his appellate argument that the trial court

erred by concluding that the State presented evidence sufficient to establish the validity of defendant's past assault conviction, and thus "link" the assault conviction with defendant's previous murder conviction which allowed admission of the murder conviction as impeachment evidence, where defense counsel argued in the trial court against the use of defendant's assault conviction for impeachment purposes. *Haley v. U.S.*, 2002, 799 A.2d 1201. Criminal Law ⇨ 1036.1(8)

Fact that "other crimes" evidence in form of testimony that defendant had set fires before in his father's house was elicited on cross-examination by defense counsel did not preclude defendant from arguing that such testimony should be basis for reversal of his conviction for felony malicious destruction of property, alleging that defendant again set that house on fire; initial question that elicited response was designed to delve into witness's possible bias, it required simple yes or no response and did not invite inflammatory remark given, and even though defense counsel repeated witness's statement when questioning resumed, counsel had right to attempt to rehabilitate defendant by showing witness's bias, in light of trial court's ruling that it would not give instruction or declare mistrial at that time. *Coleman v. U.S.*, 2001, 779 A.2d 297. Criminal Law ⇨ 1137(5)

In reviewing whether a trial court abused its discretion in restricting the cross-examination of a witness to impeach his general credibility with a prior juvenile adjudication, the appellate court must determine whether a reasonable jury could have arrived at a different outcome, not what the trial court itself would have concluded as trier. *Walls v. U.S.*, 2001, 773 A.2d 424, certiorari denied 122 S.Ct. 1112, 534 U.S. 1149, 151 L.Ed.2d 1006. Criminal Law ⇨ 1153.19

Prosecutor had good faith belief he could establish prior convictions for felony carrying a dangerous weapons (CDW), as factual predicate for impeaching defendant on cross-examination in prosecution for assault with dangerous weapon by asking about prior convictions, where prosecutor had based his questions on Pretrial Services Agency report indicating that defendant had two prior felony CDW convictions, though in fact defendant had been previously convicted of carrying a pistol without a license, unregistered firearm, and unlawful possession of ammunition. *Thomas v. U.S.*, 2001, 772 A.2d 818, certiorari denied 125 S.Ct. 233, 543 U.S. 913, 160 L.Ed.2d 193. Criminal Law ⇨ 2046

Allowing prosecution to introduce, on rebuttal, certification of defendant's prior convictions for carrying a pistol without a license (CPWL), unregistered firearm, and unlawful possession of ammunition, was not plain error in prosecution for assault with dangerous weapon, though prosecutor's impeachment of defendant on cross-examination had been based on the factual predicate of prior convictions for felony carrying a dangerous weapons (CDW), because CDW was closely related to CPWL. *Thomas v. U.S.*, 2001, 772 A.2d 818, certiorari denied 125 S.Ct. 233, 543 U.S. 913, 160 L.Ed.2d 193. Criminal Law ⇨ 1036.1(8)

Any error in trial court's failure to intervene, sua sponte, to prevent prosecutor from impeaching defendant by cross-examining him about his prior convictions, and to prevent prosecutor from arguing in closing and rebuttal that defendant had lied, was harmless, in prosecution for assault with dangerous weapon, where jury heard significant damaging testimony from defendant that he was a drug abuser who had been convicted of drug-related offenses. *Thomas v. U.S.*, 2001, 772 A.2d 818, certiorari denied 125 S.Ct. 233, 543 U.S. 913, 160 L.Ed.2d 193. Criminal Law ⇨ 1037.1(2)

Any error, in sexual abuse prosecution arising from alleged assault on then-13-year-old complaining witness, in ruling that precluded defense from cross-examining complaining witness about questions posed by her mother when she told mother of a separate alleged assault by defendant's father, was not prejudicial so as to warrant reversal of conviction; defense still had considerable leeway to explore theory that mother influenced the filing of a false report against defendant, and defense failed to call mother as witness despite having opportunity to do so. *Guzman v. U.S.*, 2001, 769 A.2d 785. Criminal Law ⇨ 1170.5(6)

Reversal based on an improper limiting of cross-examination is warranted only if prejudice results from the improper ruling. *Guzman v. U.S.*, 2001, 769 A.2d 785. Criminal Law ⇨ 1170.5(5)

Any error in admitting statements that codefendant made to Government witnesses under co-conspirator hearsay exception in joint trial was harmless, where Government's other proof was compelling and did not depend upon objectionable statements. *McCoy v. U.S.*, 2000, 760 A.2d 164, certiorari denied 121 S.Ct. 1636, 532 U.S. 987, 149 L.Ed.2d 496, certiorari denied 121 S.Ct. 2257, 533 U.S. 909, 150 L.Ed.2d 243, certiorari denied 122 S.Ct. 227, 534 U.S. 900, 151 L.Ed.2d 163, certiorari denied 122 S.Ct. 486, 534 U.S. 1005, 151 L.Ed.2d 399. Criminal Law ⇨ 1169.7

§ 14-306. Spouse or domestic partner.

(a) In civil and criminal proceedings, a spouse or domestic partner is competent but not compellable to testify for or against their spouse or domestic partner.

(b) In civil and criminal proceedings, a spouse or domestic partner is not competent to testify as to any confidential communications made by one to the other during the marriage or the domestic partnership.

(b-1) Notwithstanding subsections (a) and (b) of this section, a spouse or domestic partner is both competent and compellable to testify against his or her spouse or domestic partner as

to both confidential communications made by one to the other during the marriage or domestic partnership and any other matter in:

(1) A criminal or delinquency proceeding where one spouse or domestic partner is charged with committing:

(A) Intimate partner violence as defined in § 16-1001(7) if the spouse or domestic partner has previously refused to testify in a criminal or delinquency proceeding against the same spouse or domestic partner for an offense against him or her; or

(B) An offense against a child, minor, or vulnerable adult who is:

(i) In the custody of or resides temporarily or permanently in the household of one of the spouses or domestic partners; or

(ii) Related by blood, marriage, domestic partnership, or adoption to one of the spouses or domestic partners;

(2) A civil proceeding involving the abuse, neglect, abandonment, custody, or dependency of a child, minor, or vulnerable adult who is:

(A) In the custody of or resides temporarily or permanently in the household of one of the spouses or domestic partners; or

(B) Related by blood, marriage, domestic partnership, or adoption to one of the spouses or domestic partners; or

(3) A criminal or delinquency proceeding where one spouse or domestic partner is charged with committing a crime jointly with the other spouse or domestic partner.

(b-2) Notwithstanding subsections (a) and (b) of this section, when one spouse or domestic partner is charged with committing a crime that occurred prior to the marriage of the spouses or prior to the filing of a domestic partnership agreement, the other spouse or domestic partner is both competent and compellable to testify against his or her spouse or domestic partner as to the crime, communications made by one to the other, and any other matter that occurred prior to the marriage of the spouses, or prior to the filing of the domestic partnership agreement.

(b-3) The burden is upon the person asserting a privilege under this section to establish that it exists.

(c) For the purposes of this section, the term:

(1) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(2) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(3) "Refused to testify" means that the witness spouse or domestic partner has:

(A) Submitted an affidavit or other writing stating that she or he will not testify before a grand jury or in court;

(B) Taken the stand in the grand jury or in any court proceeding and asserted his or her privilege under this section not to testify; or

(C) Intentionally failed to appear in response to a subpoena.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1; Apr. 4, 2006, D.C. Law 16-79, § 2(b), 53 DCR 1035; Dec. 10, 2009, D.C. Law 18-88, § 206, 56 DCR 7413.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 16-79 rewrote section, which had read as follows:

"(a) In civil and criminal proceedings, a husband or his wife is competent but not compellable to testify for or against the other.

"(b) In civil and criminal proceedings, a husband or his wife is not competent to testify as to any confidential communications made by one to the other during the marriage."

D.C. Law 18-88 added subsecs. (b-1), (b-2), (b-3), and (c)(3).

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 206 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 206 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative History of Laws

Law 16-79, the "Domestic Partnership Equality Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-52 which was referred

to the Committee on Judiciary. The Bill was adopted on first and second readings on December 6, 2005, and January 4, 2006, respectively. Signed by the Mayor on January 26, 2006, it was assigned Act No. 16-265 and transmitted to both Houses of Congress for its review. D.C. Law 16-79 became effective on April 4, 2006.

Law 18-88, the "Omnibus Public Safety and Justice Amendment Act of 2009", as introduced in

Council and assigned Bill No. 18-151, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on June 30, 2009, and July 31, 2009, respectively. Signed by the Mayor on August 26, 2009, it was assigned Act No. 18-189 and transmitted to both Houses of Congress for its review. D.C. Law 18-88 became effective on December 10, 2009.

Notes of Decisions

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1. In general

In his appeal of convictions for simple assault, attempted threats and attempted possession of a prohibited weapon, arising out of incident with alleged victim whom he married prior to his trial, defendant could raise issue of whether trial court's failure to advise alleged victim of her spousal privilege not to testify required a reversal of his convictions; though prosecution argued that defendant's challenge to trial court's failure should be analyzed under the rubric of standing and that defendant lacked standing to raise the issue on appeal, question was one of a statutory violation as it impacted upon the fairness of defendant's trial. *Egbuka v. U.S.*, 2009, 968 A.2d 511. Criminal Law ⅈ 1026

Trial judge should have instructed alleged victim, who married defendant between the incident giving rise to the prosecution and defendant's trial, of her spousal privilege not to testify, in trial of defendant for simple assault, attempted threats and attempted possession of a prohibited weapon; Intrafamily Offenses Act did not render alleged victim's spousal privilege unavailable in a criminal proceeding against defendant. *Egbuka v. U.S.*, 2009, 968 A.2d 511. Witnesses ⅈ 52(1); Witnesses ⅈ 61(1)

Spousal testimony privilege belongs only to the witness spouse; it cannot be invoked by the defendant who wishes to keep his or her spouse off the witness stand. *Smith v. U.S.*, 2008, 947 A.2d 1131. Witnesses ⅈ 75

To give effect to statutory spousal testimony privilege, outside the presence of the jury, the trial judge should tell one who is called to testify for or against his spouse that his testimony cannot be compelled but may be received if volunteered. *Smith v. U.S.*, 2008, 947 A.2d 1131. Witnesses ⅈ 52(1)

Marital privilege may be invoked only by the spouse who is called to testify, not by the defendant who wishes to keep his or her spouse off the witness stand; thus, except as to confidential communications made by one to the other, a husband cannot prevent his wife from testifying against him if she is willing to do so. *Riley v. U.S.*, 2007, 923 A.2d 868, certiorari denied 129 S.Ct. 42, 555 U.S. 830, 172 L.Ed.2d 50. Witnesses ⅈ 75

2. Common law marriage

Defendant's girlfriend was not his common law wife, and thus defendant's communications with girlfriend, in which he purportedly stated that he and his co-defendant held the victims at gunpoint before shooting them and advised girlfriend to claim to police she did not know anything about the murders, were not protected by the spousal privilege in trial of defendant on two counts of first-degree premeditated murder and other crimes, where defendant had been dating his girlfriend for only one or two months before he was arrested for the murders, defendant did not ask his girlfriend to marry him until after he was arrested, and, because of defendant's incarceration, they were unable to live together after they became engaged. *Coleman v. U.S.*, 2008, 948 A.2d 534, certiorari denied 130 S.Ct. 349, 175 L.Ed.2d 231. Privileged Communications And Confidentiality ⅈ 67

Persons in common-law marriages may invoke the protection of the statutory privilege. *Coleman v. U.S.*, 2008, 948 A.2d 534, certiorari denied 130 S.Ct. 349, 175 L.Ed.2d 231. Privileged Communications And Confidentiality ⅈ 67

Defendant who claimed he and a government witness had a common law marriage, thereby triggering marital privilege, had burden to prove, by a preponderance of the evidence, all of the essential elements of a common law marriage. *Mesa v. U.S.*, 2005, 875 A.2d 79. Privileged Communications And Confidentiality ⅈ 90; Witnesses ⅈ 78

If a party proves the existence of a valid common law marriage with a witness, the marital privilege is applicable. *Mesa v. U.S.*, 2005, 875 A.2d 79. Privileged Communications And Confidentiality ⅈ 67; Witnesses ⅈ 63

Defendant failed to show by a preponderance of the evidence that he and a government witness had a common law marriage, and thus defendant could not invoke marital privilege during murder prosecution with respect to the witness's testimony and his communications with her; witness's driver's license and financial aid application for university did not bear defendant's last name, both documents revealed that she was single, witness identified herself as defendant's "girlfriend" when she spoke with police detective, defendant and witness had separate dormitory rooms at university and did not apply for married housing, and witness only told a few friends that she was married and often did not wear wedding ring. *Mesa v. U.S.*,

2005, 875 A.2d 79. Privileged Communications And Confidentiality ⇨ 67; Witnesses ⇨ 63

3. Standing

Defendant convicted of assault for an attack on his wife did not have standing to challenge admission of wife's recorded 911 emergency telephone call based on his wife's marital testimony privilege. *Smith v. U.S.*, 2008, 947 A.2d 1131. Witnesses ⇨ 75

4. Harmless error

Error of trial court by failing to instruct alleged victim, who married defendant post-crime but prior to defendant's trial, of her spousal privilege not to testify, was not harmless error, in trial of defendant for simple assault, attempted threats and

attempted possession of a prohibited weapon; though trial record was incomplete, it appeared that alleged victim would have preferred not to testify, that alleged victim suggested that she had falsely testified before the grand jury and feared a prosecution for perjury based on conflicting testimony, that alleged victim only testified because government offered her use immunity, and thus, if court had instructed her on the spousal privilege, it was likely that alleged victim would not have testified, and thus the government would not have been able to impeach the alleged victim with, and convict defendant based on, alleged victim's grand jury testimony. *Egbuka v. U.S.*, 2009, 968 A.2d 511. Criminal Law ⇨ 1170.5(1)

§ 14-307. Physicians and mental health professionals.

(a) In the Federal courts in the District of Columbia and District of Columbia courts a physician or surgeon or mental health professional as defined by § 7-1201.01(11) or a domestic violence counselor as defined in § 14-310(a)(2), or a human trafficking counselor as defined in § 14-311(a)(2) may not be permitted, without the consent of the client, or of his legal representative, to disclose any information, confidential in its nature, that he has acquired in attending a client in a professional capacity and that was necessary to enable him to act in that capacity, whether the information was obtained from the client or from his family or from the person or persons in charge of him.

(b) This section does not apply to:

(1) evidence in a grand jury, criminal, delinquency, family, or domestic violence proceeding where a person is targeted for or charged with causing the death of or injuring a human being, or with attempting or threatening to kill or injure a human being, or a report has been filed with the police pursuant to § 7-2601, and the disclosure is required in the interests of public justice;

(2) evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity or where the court is required under prevailing law to raise the defense *sua sponte*, or in the pretrial or posttrial proceedings involving a criminal case where a question arises concerning the mental condition of an accused or convicted person;

(3) evidence relating to the mental competency or sanity of a child alleged to be delinquent, neglected, or in need of supervision in any proceeding before the Family Division of the Superior Court; or

(4) evidence in a grand jury, criminal, delinquency, or civil proceeding where a person is alleged to have defrauded the District of Columbia or federal government in relation to receiving or providing services under the District of Columbia medical assistance program authorized by title 19 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 *et seq.*), or where a person is alleged to have defrauded a health care benefit program.

(c) For the purposes of this section, the term:

(1) "Health care benefit program" means any public or private plan or contract under which a medical benefit, item, or service is or may be provided to an individual, and includes an individual or entity who provides a medical benefit, item, or service for which payment may be made under the plan or contract.

(2) "Injury" includes, in addition to physical damage to the body, a sexual act or sexual contact prohibited by Chapter 30 of Title 22.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title 1, § 143(3); Mar. 3, 1979, D.C. Law 2-136, § 805(b), 25 DCR 5055; Mar. 16, 1985, D.C. Law 5-193, § 7, 32 DCR 1010; Mar. 25, 1986, D.C. Law 6-99, § 1101(a), 33 DCR 729; Apr. 30, 1988, D.C. Law 7-104, § 3, 35 DCR 147; Mar. 13, 2004, D.C. Law 15-105, § 99, 51 DCR 881; Mar. 2, 2007, D.C. Law 16-204, § 3(b), 53 DCR 9059; Apr. 24, 2007, D.C. Law 16-305, § 32, 53 DCR 6198; Dec. 10, 2009, D.C. Law 18-88, § 207, 56 DCR 7413; Oct. 23, 2010, D.C. Law 18-239, § 203(b), 57 DCR 5405.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 15-105, in subsec. (a), substituted “§ 7-1201.01(11)” for “the District of Columbia Mental Health Information Act of 1978 (D.C. Official Code, sec. 7-1201.01 *et seq.*)”.

D.C. Law 16-204, in subsec. (a), substituted “as defined in § 7-1201.01(11) or a domestic violence counselor as defined in § 14-310(a)(2)” for “as defined in § 7-1201.01(11)”.

D.C. Law 16-305, in subsec. (a), substituted “client” for “person afflicted”.

D.C. Law 18-88, in subsec. (b)(1), substituted “evidence in a grand jury, criminal, delinquency, family, or domestic violence proceeding where a person is targeted for or charged with causing the death of or injuring a human being, or with attempting or threatening to kill or injure a human being, or a report has been filed with the police pursuant to § 7-2601,” for “evidence in criminal cases where the accused is charged with causing the death of, or inflicting injuries upon, a human being;”, in subsec. (b)(4), substituted “in a grand jury, criminal, delinquency, or civil proceeding” for “in criminal or civil cases” and substituted “approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 *et seq.*), or where a person is alleged to have defrauded a health care benefit program.” for “approved July 30, 1965 (79 Stat. 343; 42 U.S.C. sec. 1396 *et seq.*)”; and added subsec. (c).

D.C. Law 18-239, in subsec. (b), substituted “defined in § 14-310(a)(2), or a human trafficking counselor as defined in § 14-311(a)(2)” for “defined in § 14-310(a)(2)”.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 207 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 207 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative History of Laws

Law 15-105, the “Technical Amendments Act of 2003”, was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Law 16-204, the “Domestic Violence Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-466, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on July 11, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 25, 2006, it was assigned Act No. 16-504 and transmitted to both Houses of Congress for its review. D.C. Law 16-204 became effective on March 2, 2007.

Law 16-305, the “People First Respectful Language Modernization Act of 2006”, was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

For Law 18-88, see notes following § 14-306.

Law 18-239, the “Prohibition Against Human Trafficking Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-70, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on March 16, 2010, and June 1, 2010, respectively. Signed by the Mayor on June 21, 2010, it was assigned Act No. 18-444 and transmitted to both Houses of Congress for its review. D.C. Law 18-239 became effective on October 23, 2010.

Notes of Decisions

11. — Expert testimony by physician, waiver of privilege

Defense experts’ national standard of care testimony was admissible in patient’s medical malpractice action against doctor, arising from removal of organs from patient’s body during “second look” cancer surgery, as experts’ testimony was based on national standard that was not personal or specula-

tive, but was generally accepted within defined medical community comprised of limited group of specialists throughout country that treated rare form of cancer, and experts were board certified, attended national meetings, and treated individuals with similar types of diseases. *Kordas v. Sugarbaker*, 2010, 990 A.2d 496. Evidence ⇨ 538; Evidence ⇨ 555.10

§ 14-309. Clergy.

A priest, clergyman, rabbi, or other duly licensed, ordained, or consecrated minister of a religion authorized to perform a marriage ceremony in the District of Columbia or duly accredited practitioner of Christian Science may not be examined in any civil or criminal proceedings in the Federal courts in the District of Columbia and District of Columbia courts with respect to any —

(1) confession, or communication, made to him, in his professional capacity in the course of discipline enjoined by the church or other religious body to which he belongs, without the consent of the person making the confession or communication; or

(2) communication made to him, in his professional capacity in the course of giving religious or spiritual advice, without the consent of the person seeking the advice; or

(3)(A) communication made to him, in his professional capacity, by either spouse or domestic partner, in connection with an effort to reconcile estranged spouses or domestic partners, without the consent of the spouse or domestic partner making the communication.

(B) for the purposes of this paragraph, the term “domestic partner” shall have the same meaning as provided in § 32–701(3).

(Dec. 23, 1963, 77 Stat. 520, Pub. L. 88–241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91–358, title I, § 143(4); Apr. 4, 2006, D.C. Law 16–79, § 2(c), 53 DCR 1035.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 16–79 rewrote par. (3) which had read as follows:

“(3) communication made to him, in his professional capacity, by either spouse, in connection

with an effort to reconcile estranged spouses, without the consent of the spouse making the communication.”

Legislative History of Laws

For Law 16–79, see notes following § 14–306.

§ 14–310. Domestic violence counselors.

(a) For the purposes of this section, the term:

(1) “Confidential communication” means information exchanged between a victim and a domestic violence counselor during the course of the counselor providing counseling, support, and assistance to a victim, including all records kept by the counselor and the domestic violence program concerning the victim and services provided to the victim.

(2) “Domestic violence counselor” means an employee, contractor, or volunteer of a domestic violence program who:

(A) Is rendering support, counseling, or assistance to a victim;

(B) Has undergone not less than 40 hours of domestic violence counselor training conducted by a domestic violence program that includes dynamics of domestic violence, trauma resulting from domestic violence, crisis intervention, personal safety, risk management, criminal and civil court processes, and resources available to victims; and

(C)(i) Is or is under the supervision of a licensed social worker, nurse, physician, psychologist, or psychotherapist; or

(ii) Is or is under the supervision of a person who has a minimum of 5 years of experience rendering support, counseling, or assistance to persons against whom severe emotional abuse or a criminal offense has been committed or is alleged to have been committed, of which at least 2 years of experience involves victims.

(3) “Domestic violence program” means a nonprofit, non-governmental organization that supports, counsels, and assists victims, including domestic violence hotlines, domestic violence shelters, and domestic violence intake centers.

(4) “Intrafamily offense” shall have the same meaning as provided in § 16–1001(8).

(5) “Victim” means a person against whom severe emotional abuse or an intrafamily offense has been committed or is alleged to have been committed.

(b)(1) A domestic violence counselor shall not disclose a confidential communication except:

(A) As required by statute or by a court of law;

(B) As voluntarily authorized in writing by the victim;

(C) To other individuals employed at the domestic violence program and third party providers when and to the extent necessary to facilitate the delivery of services to the victim;

(D) To the Metropolitan Police Department or other law enforcement agency to the extent necessary to protect the victim or another individual from a substantial risk of imminent and serious physical injury;

(E) To compile statistical or anecdotal information, without personal identifying information, for research or public information purposes; or

(F) For any confidential communications relevant to a claim or defense if the victim files a lawsuit against a domestic violence counselor or a domestic violence program.

(2) Unless the disclosure is public, confidential communications disclosed pursuant to paragraph (1) of this subsection shall not be further disclosed by the recipient except as authorized in paragraph (1) of this subsection.

(3) Confidential communications are not waived by the presence of a sign language or foreign language interpreter. Such an interpreter is subject to the same disclosure limitations set forth in paragraph (1) of this subsection and the same privilege set forth in subsection (c) of this section.

(c)(1) Except as provided in paragraph (2) of this subsection, when a victim is under 12 years of age, has been adjudicated incompetent by a court of competent jurisdiction for the purpose of asserting or waiving the privilege established by this section, or is deceased, the victim's parent, guardian, or personal representative may assert or waive the privilege.

(2) If the parent, guardian, or personal representative of a victim described in paragraph (1) of this subsection has been charged with an intrafamily offense or has had a protection order or a neglect petition entered against him or her at the request of or on behalf of the victim, or otherwise has interests adverse to those of the victim with respect to the assertion or waiver of the privilege, the court shall appoint an attorney for purposes of asserting or waiving the privilege.

(d) The assertion of any privilege under this section is not admissible in evidence.

(Mar. 2, 2007, D.C. Law 16-204, § 3(c), 53 DCR 9059; Mar. 25, 2009, D.C. Law 17-368, § 4(d), 56 DCR 1338.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 17-368, in subsec. (a)(4), substituted “§ 16-1001(8)” for “§ 16-1001(5)”.

Legislative History of Laws

For Law 16-204, see notes following § 14-307.

Law 17-368, the “Intrafamily Offenses Act of 2008”, was introduced in Council and assigned Bill

No. 17-55 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 22, 2009, it was assigned Act No. 17-703 and transmitted to both Houses of Congress for its review. D.C. Law 17-368 became effective on March 25, 2009.

§ 14-311. Human trafficking counselors.

(a) For the purposes of this section, the term:

(1) “Confidential communication” means information exchanged between a victim and a human trafficking counselor during the course of the counselor providing counseling, support, and assistance to a victim, including all records kept by the counselor and the human trafficking program concerning the victim and services provided to the victim.

(2) “Human trafficking counselor” means an employee, contractor, or volunteer of a human trafficking program who:

(A) Is rendering support, counseling, or assistance to a victim;

(B) Has undergone not less than 40 hours of human trafficking counselor training conducted by a human trafficking program that includes dynamics of human trafficking, trauma resulting from human trafficking, crisis intervention, personal safety, risk management, criminal and civil court processes, and resources available to victims; and

(C)(i) Is or is under the supervision of a licensed social worker, nurse, physician, psychologist, or psychotherapist; or

(ii) Is or is under the supervision of a person who has a minimum of 5 years of experience rendering support, counseling, or assistance to persons against whom severe emotional abuse or a criminal offense has been committed or is alleged to have been committed, of which at least 2 years of experience involves human trafficking victims.

(3) “Human trafficking offense” means abducting or enticing a child from his or her home for purposes of prostitution (§ 22-2704); harboring such child (§ 22-2704); pandering (§ 22-2705); inducing or compelling an individual to engage in prostitution (§ 22-2705); compelling an individual to live life of prostitution against his or her will (§ 22-2706);

causing spouse to live in prostitution (§ 22–2708); sexual performance using minors (§ 22–3102); forced labor as prohibited by [§ 22–1832]; trafficking in labor or commercial sex as prohibited by [§ 22–1833]; sex trafficking of children as prohibited by [§ 22–1834]; unlawful conduct with respect to documents in furtherance of human trafficking as prohibited by [22–1835]; or benefitting financially from human trafficking, as prohibited by [§ 22–1836].

(4) “Human trafficking program” means a nonprofit, non-governmental organization that supports, counsels, and assists victims of human trafficking.

(5) “Intrafamily offense” shall have the same meaning as provided in § 16–1001(8).

(6) “Victim” means a person against whom a human trafficking offense has been committed or is alleged to have been committed.

(b)(1) A human trafficking counselor shall not disclose a confidential communication except:

(A) As required by statute or by a court of law;

(B) As voluntarily authorized in writing by the victim;

(C) To other individuals employed at the human trafficking program and third party providers when and to the extent necessary to facilitate the delivery of services to the victim;

(D) To the Metropolitan Police Department or other law enforcement agency to the extent necessary to protect the victim or another individual from a substantial risk of imminent and serious physical injury or kidnapping;

(E) To compile statistical or anecdotal information, without personal identifying information, for research or public information purposes; or

(F) For any confidential communications relevant to a claim or defense if the victim files a lawsuit against a human trafficking counselor or a human trafficking program.

(2) Unless the disclosure is public, confidential communications disclosed pursuant to paragraph (1) of this subsection shall not be further disclosed by the recipient except as authorized in paragraph (1) of this subsection.

(3) Confidential communications are not waived by the presence of a sign language or foreign language interpreter. Such an interpreter is subject to the same disclosure limitations set forth in paragraph (1) of this subsection and the same privilege set forth in subsection (c) of this section.

(c)(1) Except as provided in paragraph (2) of this subsection, when a victim is under 12 years of age, has been adjudicated incompetent by a court of competent jurisdiction for the purpose of asserting or waiving the privilege established by this section, or is deceased, the victim’s parent, guardian, or personal representative may assert or waive the privilege.

(2) If the parent, guardian, or personal representative of a victim described in paragraph (1) of this subsection has been charged with an intrafamily offense or has had a protection order or a neglect petition entered against him or her at the request of or on behalf of the victim, or otherwise has interests adverse to those of the victim with respect to the assertion or waiver of the privilege, the court shall appoint an attorney for purposes of asserting or waiving the privilege.

(d) The assertion of any privilege under this section is not admissible in evidence.

(Oct. 23, 2010, D.C. Law 18–239, § 203(c), 57 DCR 5405.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 18–239, see notes under § 14–307.

Chapter 5

Documentary Evidence.

Section

14–507. Other methods of proof.

§ 14-507. Other methods of proof.

Notes of Decisions

1. In general

Reports which were not offered for the truth of what was asserted in them, but, rather, to show that employer relied on them in deciding to discipline employee and then to terminate him were not

hearsay so as to be inadmissible in employment discrimination action. *Hollins v. Federal Nat. Mortg. Ass'n*, 2000, 760 A.2d 563. Evidence ⚡ 318(4)

Chapter 7

Absence for Seven Years.

Section

14-701. Presumption of death.

§ 14-701. Presumption of death.

Notes of Decisions

3. — Overcoming presumption, presumption as to continuance of life

A newspaper article that stated that a pilot was “reported to be” an occupant of a plane that crashed was insufficient to overcome the presumption, given that the pilot had been absent for less

than seven years, that the pilot was alive, and thus the Superior Court would deny without prejudice a petition to probate the pilot's estate; the article did not identify the source of the purported identification. *In re Karen L. Dodds*, 135 WLR 2889 (Super. Ct. 2007).

TITLE 15

JUDGMENTS AND EXECUTIONS; FEES AND COSTS.

Chapter	Section
1. Judgments and Decrees.	15-101
3. Enforcement of Judgments and Decrees.	15-314
5. Exemptions and Trial of Right to Seized Property.	15-501
7. Fees and Costs.	15-701
9. Uniform Foreign-Money Claims.	15-901

Chapter 1

Judgments and Decrees.

Section	Section
15-101. Enforceable period of judgments; expiration.	15-104. Priority of liens.
15-102. Lien of judgment, decree, or forfeited recognizance.	15-108. Interest on judgment for liquidated debt.
	15-109. Interest on judgment for damages in contract or tort.

§ 15-101. Enforceable period of judgments; expiration.

Historical and Statutory Notes

Miscellaneous Notes

Section 27 of D.C. Law 15-354 provides that Title 15 is designated Title 15 of the District of Columbia Official Code.

Notes of Decisions

Stay of enforcement 8

4. Period as statute of limitations

Judgment-creditor's motion to revive a judgment against debtor, which was filed within the twelve-year limitations period, was timely, regardless of whether motion came to the attention of the trial court after the twelve years had lapsed; twelve-year period was not jurisdictional in nature so as to preclude trial court from acting once motion came to court's attention, and limitations statute only required filing within limitations period. *National Bank of Washington v. Carr*, 2003, 829 A.2d 942. Federal Courts ⇨ 1052.1

Twelve-year period for enforcement of judgment was never tolled, and thus, judgment creditor was precluded from reviving judgment, which had expired, though appeal had been filed during period, given that no stay was sought nor supersedeas bond obtained or filed. *Dickey v. Fair*, 2001, 768 A.2d 540. Federal Courts ⇨ 1052.1; Federal Courts ⇨ 1061

Supersedeas bond operates to stay the enforcement of a judgment pending appeal, and thus, it tolls the statutory twelve-year limit on enforcing a judgment. *Dickey v. Fair*, 2001, 768 A.2d 540.

Federal Courts ⇨ 1052.1; Federal Courts ⇨ 1061

7. Laches

Assuming that delay was unexcused in renewing motion for reconsideration of judgment that allowed estate attorney to retain payment for fees incurred prior to removal of personal representatives of estate, attorney did not establish that he was prejudiced by the delay as required for a defense of laches, even though estate's heir and one of the removed personal representatives of estate died during the delay, where the heir was not relevant as a witness, the other removed representative was still alive, and deposition testimony from the deceased representative existed. In re *Estate of Derricotte*, 2005, 885 A.2d 320. Federal Courts ⇨ 1052.1

Three year long gap between motion to reconsider judgment allowing estate attorney to retain payment for fees incurred prior to removal of personal representatives of estate and the renewed motion for reconsideration was excusable, and thus, the successor representative was not precluded under the doctrine of laches from renewing motion, where the delay was due to the fact that the trial court lost jurisdiction over the case once the removed representatives appealed the court's

§ 15-101

Note 7

ruling, and jurisdiction did not return until the Court of Appeals ruled on the appeal. In re Estate of Derricotte, 2005, 885 A.2d 320. Federal Courts ⇨ 1052.1

A plaintiff may not use laches to bar a right asserted merely by way of defense. LaPrade v. Rosinsky, 2005, 882 A.2d 192. Equity ⇨ 84

Laches may be used as a shield, but not as a sword by one seeking affirmative relief. LaPrade v. Rosinsky, 2005, 882 A.2d 192. Equity ⇨ 84

Purported purchaser of undivided one-half interest in residential real property could not use her broad assertion that purported vendors were barred by laches to keep vendors from raising a defense on the merits against her action for partition. LaPrade v. Rosinsky, 2005, 882 A.2d 192. Partition ⇨ 44

Trade name owner's competitor did not waive its affirmative defense of laches by failing to raise it in answer to owner's petition to enforce consent de-

JUDGMENTS AND EXECUTIONS; FEES AND COSTS

cree; the competitor put the owner on notice of its affirmative defense of laches in its summary judgment pleadings, the owner had and exercised a full and fair opportunity to meet it, and there was no prejudice. Federal Marketing Co. v. Virginia Impression Products Co., Inc., 2003, 823 A.2d 513. Federal Courts ⇨ 1052.1

8. Stay of enforcement

Stay of enforcement period of a judgment can be granted by either the trial court or Court of Appeals for any lawful reason, but not without first posting a supersedeas bond or some other appropriate security. Dickey v. Fair, 2001, 768 A.2d 540. Federal Courts ⇨ 1052.1; Federal Courts ⇨ 1061

Noting of an appeal that is not accompanied or followed by the filing of a supersedeas bond does not operate to stay the enforcement of a judgment. Dickey v. Fair, 2001, 768 A.2d 540. Federal Courts ⇨ 1052.1; Federal Courts ⇨ 1061

§ 15-102. Lien of judgment, decree, or forfeited recognizance.

Notes of Decisions

Construction with other laws 2 Decree for the payment of money 3

2. Construction with other laws

Judgment creditor was required to record judgment lien against judgment debtor's real property pursuant to statute governing the recording of final judgments, not pursuant to lis pendens statute, since lis pendens statute did not apply to litigation that was no longer pending, and thus creditor's lien had priority over liens against the property recorded after creditor had recorded lien under final judgment statute. Fidelity Nat. Title Ins. Co. of New York v. Tillerson, 2010, 2 A.3d 198. Judgment ⇨ 766.1; Lis Pendens ⇨ 11(1); Mortgages ⇨ 151(5)

3. Decree for the payment of money

Certified copy of the docket sheet in a Landlord Tenant Court case, that showed that a money

judgment had been entered, constituted a "decree for the payment of money" within meaning of judgment lien statute, and therefore the filing and recordation in the Office of the Recorder of Deeds of a certified copy of the docket sheet by the judgment creditor sufficed to create a lien on the real property of an individual against whom the Landlord and Tenant Court had entered a money judgment; docket entry was a separately dated item, demarcating it as distinct from the other 39 entries on the docket sheet, entry contained no recital of pleadings and no history or record of prior proceedings, entry stated plainly in whose favor the judgment was entered and, since it appeared on a docket sheet bearing the caption of the case, anyone reading entry could have seen against whom the judgment was entered. Robinson v. Georgetown Court Condominium, LLC, 2012, 39 A.3d 1286. Federal Courts ⇨ 1052.1

§ 15-104. Priority of liens.

Notes of Decisions

1. In general

Generally, priority of liens or security interests is determined according to the well-known principle of first in time, first in right. Eastern Sav. Bank, FSB v. Pappas, 2003, 829 A.2d 953, on remand 2005 WL 4721624. Liens ⇨ 12; Secured Transactions ⇨ 138

Statute giving priority to purchase money as exception to principle of first in time, first in right,

did not preclude equitable subrogation of lender to position of senior deed of trust in connection with refinancing; the doctrine of equitable subrogation was concerned with an issue that did not arise under the statute. Eastern Sav. Bank, FSB v. Pappas, 2003, 829 A.2d 953, on remand 2005 WL 4721624. Mortgages ⇨ 158; Subrogation ⇨ 31(4)

§ 15-108. Interest on judgment for liquidated debt.

Notes of Decisions

Alimony 4.5

Prejudgment interest 6.5

1. In general

District of Columbia statute providing for prejudgment interest is remedial, and should be generously construed so that wronged party can be made whole. *Athridge v. Iglesias*, 2005, 382 F.Supp.2d 42, appeal dismissed 2007 WL 2910060. Interest ⇨ 39(2.6)

Settling tortfeasor was not entitled in contribution action to prejudgment interest under statute applicable to liquidated debts, where settling tortfeasor sought to recover settlement amount of \$850,000 from non-settling tortfeasor but recovered judgment of only \$600,000, one-half of which had to be paid by non-settling tortfeasor. *M. Pierre Equipment Co., Inc. v. Griffith Consumers Co.*, 2003, 831 A.2d 1036. Interest ⇨ 39(2.20)

It may be appropriate to limit prejudgment interest, or perhaps even deny it altogether, where the plaintiff has been responsible for undue delay in prosecuting the lawsuit. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Interest ⇨ 39(2.6)

4. Contract claims

Pedestrian, who was injured when struck by automobile driven by unlicensed teenage driver and who subsequently obtained judgment against owners of automobile, failed to establish that initial unsatisfied judgment against driver was payable by contract or usage, and thus was entitled under District of Columbia law to prejudgment interest accruing from date of latter rather than prior judgment. *Athridge v. Iglesias*, 2005, 382 F.Supp.2d 42, appeal dismissed 2007 WL 2910060. Interest ⇨ 39(2.50)

Where a contract does not specifically require compound interest, court is reluctant to imply such a term absent a showing of agreement between the parties. *Bragdon v. Twenty-Five Twelve Associates Ltd. Partnership*, 2004, 856 A.2d 1165. Interest ⇨ 60

Prejudgment and judgment interest are ordinarily not compounded in the absence of contract provision. *Bragdon v. Twenty-Five Twelve Associates Ltd. Partnership*, 2004, 856 A.2d 1165. Interest ⇨ 60

When a liquidated damages provision is the product of fair arm's length bargaining, particularly between sophisticated parties, common law suspicions may be eased and more latitude may be afforded the contracting parties to agree as they wish on the remedies for breach. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Damages ⇨ 76

Where there is a disparity of bargaining power and one party unilaterally imposes a liquidated damages provision in an adhesive contract, the

skepticism shown by the common law to liquidated damages is at its height. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Damages ⇨ 76

Considerations of judicial economy and freedom of contract favor enforcement of stipulated damages clauses, as such clauses enable the contracting parties to control their exposure to risk, achieve economic efficiency, avoid the uncertainty, delay, and expense of the judicial process, and correct what the parties perceive to be inadequate judicial remedies by agreeing upon a formula which may include damage elements too uncertain or remote to be recovered under rules of damages applied by the courts. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Damages ⇨ 76

For a liquidated damages clause to be valid and enforceable, and not void as a penalty, the common law insists that the liquidated damages must not be disproportionate to the level of damages reasonably foreseeable at the time of the making of the contract. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Damages ⇨ 80(1)

Liquidated damages clauses that provide for payment of fixed sums plainly without reasonable relation to any probable damage which may follow a breach will not be enforced. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Damages ⇨ 80(1)

Where liquidated damages provision is designed to make the default of the party against whom it runs more profitable to the other party than performance would be, it will be void as a penalty. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Damages ⇨ 80(1)

When a contract specifies in a liquidated damages provision a single sum in damages for any and all breaches even though it is apparent that all are not of the same gravity, the specification is not a reasonable effort to estimate damages; and when in addition the fixed sum greatly exceeds the actual damages likely to be inflicted by a minor breach, its character as an improper penalty, rather than a method for determining damages, becomes unmistakable. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Damages ⇨ 79(1); Damages ⇨ 80(1)

While disgorgement is an appropriate remedy for collection of exorbitant liquidated damages, the invalidation of a contractual liquidated damages provision does not deprive the non-breaching party of a remedy for the other party's breach of the contract; non-breaching party is entitled to prove and recover—or recoup, if it is the defendant—its actual damages. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Damages ⇨ 85

September contract for delivery of concrete planks was a modification of earlier contract for

§ 15-108

Note 4

JUDGMENTS AND EXECUTIONS; FEES AND COSTS

manufacture, not a new contract, and thus supplier was entitled to the 1.5% interest rate on unpaid delivery fees specified in the original contract; contractor asked supplier to deliver planks and agreed to pay for delivery costs, and nothing in original contract prohibited modification. *Hildreth Consulting Engineers, P.C. v. Larry E. Knight, Inc.*, 2002, 801 A.2d 967. Interest ⇨ 36(2)

4.5. Alimony

Trial court could not order payment of more than \$12,000 in alimony arrears by former husband at a rate of \$50 a month without awarding pre- or post-judgment interest and without making any findings regarding basis for its decision to spread payment over such a long period of time; failure to award interest effectively deprived former wife of full value of money owed her. *Li v. Lee*, 2003, 817 A.2d 841. Divorce ⇨ 1063

5. Mandatory nature of interest

The court usually should award prejudgment interest as delay damages, where the debtor should have paid what he owed, absent some justification for withholding such an award. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Interest ⇨ 39(2.6)

6. Liquidated debt defined

For a debt to be “liquidated” so to permit recovery under District of Columbia law of prejudgment interest thereon, it must be an easily ascertainable sum certain. *American Nat. Red Cross v. Vinton Roofing Co., Inc.*, 2010, 697 F.Supp.2d 71. Interest ⇨ 39(2.15)

Debt former employer owed to former employee for sales commissions and other compensation was not easily ascertainable, and thus was unliquidated debt not subject to pre-judgment interest, under District of Columbia code provision applicable only to liquidated debts, in her action to recover compensation from employer. *Fudali v. Pivotal Corp.*, 2008, 623 F.Supp.2d 11, motion denied 2009 WL 4250580, appeal dismissed 367 Fed.Appx. 165, 2010 WL 597311. Interest ⇨ 39(2.40)

Liquidated debt, for purposes of District of Columbia statute providing for prejudgment interest, must be easily ascertainable “sum certain” at time it arose. *Athridge v. Iglesias*, 2005, 382 F.Supp.2d 42, appeal dismissed 2007 WL 2910060. Interest ⇨ 39(2.15)

Fact that total amount of damages sought by owners of commercial building changed during trial did not affect the “liquidated” nature of owners’ breach of contract claim against asset manager, for purposes of statute authorizing an award of prejudgment interest in an action to recover on a liquidated debt on which interest is payable, where the changes in total amount were due to adding or subtracting other classes of damages, while the breach of contract amount remained unchanged. *Washington Inv. Partners of Delaware, LLC v. Securities House, K.S.C.C.*, 2011, 28 A.3d 566. Interest ⇨ 39(2.30)

Asset manager’s debt to owners of commercial building, for manager’s retention of fees, paid un-

der asset management agreement with owners of commercial building, for services it had not rendered, was a “liquidated” debt, for purposes of statute authorizing an award of prejudgment interest in an action to recover on a liquidated debt on which interest is payable; both parties knew exactly how much manager had been paid under the agreement. *Washington Inv. Partners of Delaware, LLC v. Securities House, K.S.C.C.*, 2011, 28 A.3d 566. Interest ⇨ 39(2.30)

A “liquidated debt” for which prejudgment interest is recoverable from time the debt is due and payable is one which at the time it arose was an easily ascertainable sum certain. *Aon Risk Services, Inc. of Washington, D.C. v. Estate of Coyne*, 2007, 915 A.2d 370. Interest ⇨ 39(2.15)

Amount that first successor personal representative took from decedent’s estate without court approval to pay for fees that probate court declined to award was a “liquidated debt,” for purposes of prejudgment interest statute, as first successor personal representative stipulated that he withdrew such amount and thus amount was an easily ascertainable sum certain. In re *Estate of Green*, 2006, 912 A.2d 1198. Interest ⇨ 39(2.20)

A “liquidated debt” on which prejudgment interest can be awarded is one which at the time it arose was an easily ascertainable sum certain. In re *Estate of Green*, 2006, 912 A.2d 1198. Interest ⇨ 39(2.15)

A debt is “liquidated” and entitles creditor to prejudgment interest, if its amount was readily ascertainable at the time it arose. *Allen v. Yates*, 2005, 870 A.2d 39. Interest ⇨ 39(2.15)

“Liquidated debt” is one which at the time it arose, was an easily ascertainable sum certain, for purposes of determining entitlement to prejudgment interest. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Interest ⇨ 39(2.15)

A “liquidated debt” supporting prejudgment interest is one which, at the time it arose, was an easily ascertainable sum certain. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Interest ⇨ 39(2.15)

6.5. Prejudgment interest

Former employee was not entitled to pre-judgment interest, under District of Columbia code provision allowing interest as necessary to fully compensate employee, on unliquidated debts former employer owed to her as sales commissions and other compensation; employee neither requested jury to determine interest issue nor objected to instructions that were silent as to interest, even though federal rules required jury determination regarding interest. *Fudali v. Pivotal Corp.*, 2008, 623 F.Supp.2d 11, motion denied 2009 WL 4250580, appeal dismissed 367 Fed.Appx. 165, 2010 WL 597311. Federal Civil Procedure ⇨ 2178; Interest ⇨ 66

Award of prejudgment interest on prevailing party attorney fees award was not warranted in action alleging District of Columbia violated IDEA, since action was not one to recover “liquidated

debt,” and District had not unreasonably refused to settle parent’s request for prevailing party attorney fees. *McClam v. District of Columbia*, 2011, 808 F.Supp.2d 184. Interest ⇨ 39(2.45)

Except as to construction firm’s claim for prejudgment interest on its damages for “general conditions” under contract with international news network for construction of state-of-art television studio and office space, award of prejudgment and postjudgment interest to firm on damages award was warranted under District of Columbia law in action for breach of contract and unjust enrichment; all damages were easily ascertainable when network terminated contract for convenience, except firm’s damages for such general conditions. *Winmar, Inc. v. Al Jazeera Intern.*, 2010, 741 F.Supp.2d 165, amended 813 F.Supp.2d 163, vacated in part 2011 WL 6396531. Interest ⇨ 39(2.30)

Under District of Columbia law, sales agent was entitled to recover prejudgment interest on jury’s damages award in its favor in its action against manufacturer for breach of fiduciary duty, despite manufacturer’s contention that debt was not ascertainable until jury awarded specific amount in damages. *C & E Services, Inc. v. Ashland Inc.*, 2009, 601 F.Supp.2d 262. Interest ⇨ 39(2.20)

Co-lead counsel’s “debt” to law firm arising from court-ordered increase in law firm’s allocation from aggregate attorney fee award in antitrust class action litigation against vitamin manufacturers, following law firm’s successful challenge of co-lead counsel’s original fee allocations, was not liquidated at the time debt arose, precluding award of prejudgment interest under District of Columbia statute providing for prejudgment interest in action to recover liquidated debt. *In re Vitamins Antitrust Litigation*, 2005, 398 F.Supp.2d 209. Interest ⇨ 39(2.20)

In action brought by pedestrian who was injured when struck by automobile driven by unlicensed teenage driver and who subsequently obtained judgment against owners of automobile, district court was within its discretion in declining to award prejudgment interest accruing from date of prior unsatisfied judgment against driver; it was unclear whether statute providing for such interest in contract and conversion actions applied to negligence claims, and owners did not become liable until nine years after initial judgment against driver. *Athridge v. Iglesias*, 2005, 382 F.Supp.2d 42, appeal dismissed 2007 WL 2910060. Interest ⇨ 39(2.50)

Pedestrian, who was injured when struck by automobile driven by unlicensed teenage driver and who subsequently obtained judgment against owners of automobile, failed to establish that he was entitled under District of Columbia law to prejudgment interest accruing from date of prior unsatisfied judgment against driver, pursuant to remedial objectives of statute, since pedestrian did not have right to stipulated amount of damages until date of factual finding holding owners liable. *Athridge v. Iglesias*, 2005, 382 F.Supp.2d 42, appeal dismissed 2007 WL 2910060. Interest ⇨ 39(2.50)

Suit by policyholder and insured’s estate against broker for procuring accidental death policy with 180-day, rather than 365-day, incurrual period in which death needed to occur did not seek liquidated debt and, therefore, did not entitle policyholder and estate to prejudgment interest; an insurance brokerage expert testified that the insurer would have sought to reduce its exposure by reducing the policy limits of a policy with a 365-day period, and, thus, a reasonable controversy as to damages existed. *Aon Risk Services, Inc. of Washington, D.C. v. Estate of Coyne*, 2007, 915 A.2d 370. Interest ⇨ 39(2.35)

Prejudgment interest statute mandates prejudgment interest for liquidated debts from the date the debt is due until the date it is paid. *In re Estate of Green*, 2006, 912 A.2d 1198. Interest ⇨ 39(2.15)

Prejudgment interest was to be calculated on amounts that first successor personal representative withdrew from estate without court permission for fees by applying the interest rate to each of the three withdrawals from the date each of them was withdrawn, as prejudgment interest statute mandated prejudgment interest for liquidated debts from the date the debt was due until the date it was paid. *In re Estate of Green*, 2006, 912 A.2d 1198. Interest ⇨ 39(2.20); Interest ⇨ 56

Interest would have been earned on amount that first successor personal representative took from decedent’s estate without court approval to pay for fees that probate court declined to award, such that “usage” requirement of prejudgment interest statute was satisfied, even if second successor personal representative did not demonstrate that there was a history of requiring prejudgment interest in the probate court, as funds that first successor personal representative took from the estate would have been accruing interest or some other type of income had they remained in the estate’s account. *In re Estate of Green*, 2006, 912 A.2d 1198. Interest ⇨ 39(2.20)

The purpose of prejudgment interest, and of the statute authorizing it, is to assure that the wronged party can be made whole. *Allen v. Yates*, 2005, 870 A.2d 39. Interest ⇨ 39(2.6)

Prejudgment interest accrues on the principal debt from the time when it was due and payable, at the rate fixed by the contract, if any. *Allen v. Yates*, 2005, 870 A.2d 39. Interest ⇨ 35; Interest ⇨ 39(2.6)

Prejudgment interest must be awarded if the underlying debt is liquidated and if such interest is payable by contract or by law or usage. *Allen v. Yates*, 2005, 870 A.2d 39. Interest ⇨ 39(2.6); Interest ⇨ 39(2.15)

Resident who was overcharged rent by community residence facility was entitled to prejudgment interest on the basis of law and usage, to compensate for overpayment and the resulting deprivation of the use of that money. *Bragdon v. Twenty-Five Twelve Associates Ltd. Partnership*, 2004, 856 A.2d 1165. Interest ⇨ 39(2.20)

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Note 6.5

Prejudgment interest was to be calculated on each overcharge of rent from the date of its payment by resident, rather than from the date resident made demand on community residence facility for the overcharges, where facility was found to have exerted undue influence on resident; facility could not retain benefit that resulted from possession of overcharges. *Bragdon v. Twenty-Five Twelve Associates Ltd. Partnership*, 2004, 856 A.2d 1165. Interest ⇨ 39(2.20)

In the case of overcharges, prejudgment interest is mandated on the basis of law and usage. *Bragdon v. Twenty-Five Twelve Associates Ltd. Partnership*, 2004, 856 A.2d 1165. Interest ⇨ 39(2.20)

Trial court which determined that prejudgment interest on overcharges of rent was not authorized by underlying contract should have ascertained whether law of customary usage required payment of prejudgment interest. *Bragdon v. Twenty-Five Twelve Associates Ltd. Partnership*, 2004, 856 A.2d 1165. Interest ⇨ 39(2.20)

Where a plaintiff has lost use of his money, a denial of prejudgment interest would deny full compensation to the plaintiff while allowing the recalcitrant party to take advantage of his own wrong and become the richer for it. *Bragdon v. Twenty-Five Twelve Associates Ltd. Partnership*, 2004, 856 A.2d 1165. Interest ⇨ 39(2.6)

Prejudgment interest is not meant to punish a defendant. *Bragdon v. Twenty-Five Twelve Associates Ltd. Partnership*, 2004, 856 A.2d 1165. Interest ⇨ 39(2.6)

Important question in determining entitlement to prejudgment interest is whether the plaintiff has been deprived of the use of the money withheld and should be compensated for the loss. *Bragdon v. Twenty-Five Twelve Associates Ltd. Partnership*, 2004, 856 A.2d 1165. Interest ⇨ 39(2.6)

A court must conduct a separate analysis of each of the three statutory bases for awarding prejudgment interest: contract, law, and usage. *Bragdon v. Twenty-Five Twelve Associates Ltd. Partnership*, 2004, 856 A.2d 1165. Interest ⇨ 39(2.6)

Contractual term entitling community residence facility to a finance charge on late rental payments did not require facility to pay resident prejudgment interest in the event of an overcharge of rent. *Bragdon v. Twenty-Five Twelve Associates Ltd. Partnership*, 2004, 856 A.2d 1165. Interest ⇨ 6; Interest ⇨ 39(2.20)

JUDGMENTS AND EXECUTIONS; FEES AND COSTS

Consumers', who sued for liquidated debt of sum total of unreasonably high \$5.00 late fees paid to cable company in class action suit brought pursuant to Consumer Protection Procedures Act (CPPA), were entitled to recover pre-judgment interest on the balance between total sum and setoff for actual damages cable company incurred due to late payment, pursuant to the interest on the net balance rule. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Interest ⇨ 39(2.20)

Statutes providing for "prejudgment interest" are remedial and should be generously construed so that the wronged party can be made whole. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Interest ⇨ 39(2.6)

"Prejudgment interest" is an element of complete compensation to a creditor for the loss of use of money that a debtor wrongfully withholds. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Interest ⇨ 39(2.6)

Where statutory conditions are met, prejudgment interest on judgment for liquidated debt is mandatory. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Interest ⇨ 39(2.10)

Under either statute providing for award of prejudgment interest on liquidated debts or statute permitting discretionary award of prejudgment interest, purchaser of used car at public auction was entitled to award of pre-judgment interest in his conversion action against District of Columbia; admitted fair market value of vehicle plus uncontested amount spent on repairs prior to conversion was a 'liquidated debt,' and award of interest was required to make buyer whole. *Teel v. District of Columbia*, 132 WLR 2145 (Super. Ct. 2004).

7. Time from which interest runs

Pedestrian, who was injured when struck by automobile driven by unlicensed teenage driver and who subsequently obtained judgment against owners of automobile, failed to establish that extent of owners' liability was easily ascertainable at time initial unsatisfied judgment against driver became due and payable, and thus was entitled under District of Columbia law to prejudgment interest accruing from date of latter rather than prior judgment. *Athridge v. Iglesias*, 2005, 382 F.Supp.2d 42, appeal dismissed 2007 WL 2910060. Interest ⇨ 39(2.50)

§ 15-109. Interest on judgment for damages in contract or tort.

Notes of Decisions

Discretion of court 2.5

1. In general

District court has broad discretion to award prejudgment interest. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 2005, 398 F.Supp.2d 147, amended in part 439 F.Supp.2d 124. Interest ⇨ 39(2.10)

Medical malpractice plaintiff was entitled to interest on damages award from the date of the jury's verdict, where the initial judgment and verdict was vacated by the trial court, then reinstated on appeal, which led to the entry of a second judgment. *Chidel v. Hubbard*, 2004, 840 A.2d 689. Interest ⇨ 39(3)

"Prejudgment interest" is an element of complete compensation to a creditor for the loss of use of money that a debtor wrongfully withholds. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Interest ⇨ 39(2.6)

Statutes providing for "prejudgment interest" are remedial and should be generously construed so that the wronged party can be made whole. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Interest ⇨ 39(2.6)

Consumers', who sued for liquidated debt of sum total of unreasonably high \$5.00 late fees paid to cable company in class action suit brought pursuant to Consumer Protection Procedures Act (CPPA), were entitled to recover pre-judgment interest on the balance between total sum and setoff for actual damages cable company incurred due to late payment, pursuant to the interest on the net balance rule. *District Cablevision Ltd. Partnership v. Bassin*, 2003, 828 A.2d 714. Interest ⇨ 39(2.20)

The purpose of awarding prejudgment interest as part of the damages for breach of contract is to compensate the creditor for the loss of the use of money over time. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Interest ⇨ 39(2.30)

Strictly speaking, an award of prejudgment interest is not mandatory where the claim is unliquidated and interest is not specifically required by the contract itself or by law or prevailing usage. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Interest ⇨ 39(2.10)

Competitor's contempt by violating consent decree that prohibited competitor from conducting business in the District of Columbia in the trade name owner's name did not entitle owner to prejudgment interest; the decree specified the remedy for its violation and omitted any provision for such interest even though the parties recognized that an accounting for improper profits could cover a period of several years, the trial court could view an award without interest as sufficient, especially since the owner did not show that it would have earned any more profits itself if the competitor had complied with its obligations, and the owner was dilatory in seeking to enforce its rights under the decree. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Interest ⇨ 39(2.20)

Trial court could not order payment of more than \$12,000 in alimony arrears by former husband at a rate of \$50 a month without awarding pre- or post-judgment interest and without making any findings regarding basis for its decision to spread payment over such a long period of time; failure to award interest effectively deprived former wife of full value of money owed her. *Li v. Lee*, 2003, 817 A.2d 841. Divorce ⇨ 1063

2. Choice of law

Issue of plaintiff's entitlement to prejudgment interest was substantive matter, and thus was governed by forum law in action under court's

diversity jurisdiction. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 2005, 398 F.Supp.2d 147, amended in part 439 F.Supp.2d 124. Federal Courts ⇨ 415

2.5. Discretion of court

Under District of Columbia law, an award of prejudgment interest in a breach of contract action is within the broad discretion of the trial court. *Winder v. District of Columbia*, 2008, 555 F.Supp.2d 103, affirmed 566 F.3d 209, 386 U.S.App.D.C. 26, rehearing en banc denied, on remand 767 F.Supp.2d 179. Interest ⇨ 39(2.30)

3. Inclusion to fully compensate victim

Law firm that successfully challenged its allocation from aggregate attorney fee award in antitrust class action litigation against vitamin manufacturers was not entitled, under District of Columbia law, to prejudgment interest on additional fees that district court had awarded to it due to court's determination that co-lead counsel abused its discretion in determining amount of law firm's allocation, given that court's award reflected compromise between unacceptable alternatives of doing nothing or reallocating entire fee award, such that award of prejudgment interest on amount of additional award was not required to make law firm whole. *In re Vitamins Antitrust Litigation*, 2005, 398 F.Supp.2d 209. Interest ⇨ 39(2.20)

Under District of Columbia statute governing award of prejudgment interest in contract and conversion actions, fundamental criterion guiding the exercise of discretion to award prejudgment interest is whether plaintiff will be fully compensated without it. *In re Vitamins Antitrust Litigation*, 2005, 398 F.Supp.2d 209. Interest ⇨ 39(2.30); Interest ⇨ 39(2.50)

While the general rule may be that prejudgment interest is usually unavailable in breach of contract cases involving unliquidated claims, the court has ample discretion to include prejudgment interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Interest ⇨ 39(2.30)

A court has discretion to order a civil contemnor to pay prejudgment interest when such an award is necessary to compensate fully the party aggrieved; civil contempt sanctions serve a remedial purpose, and no explicit statutory authorization is required for an award of prejudgment interest. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Interest ⇨ 39(2.20)

Under either statute providing for award of prejudgment interest on liquidated debts or statute permitting discretionary award of prejudgment interest, purchaser of used car at public auction was entitled to award of pre-judgment interest in his conversion action against District of Columbia; admitted fair market value of vehicle plus uncontested amount spent on repairs prior to conversion was a 'liquidated debt,' and award of interest was required to make buyer whole. *Teel v. District of Columbia*, 132 WLR 2145 (Super. Ct. 2004).

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Note 4

JUDGMENTS AND EXECUTIONS; FEES AND COSTS

4. Breach of contract

Under District of Columbia law, award of prejudgment interest in favor of former school district employee on sum representing unpaid salary and unused annual leave was warranted in employee's breach of contract suit; the sum was easily ascertainable, no basis was offered for withholding it, employee had been deprived of that money for the five years since the date of his termination, and he had commenced suit without undue delay. *Winder v. District of Columbia*, 2008, 555 F.Supp.2d 103, affirmed 566 F.3d 209, 386 U.S.App.D.C. 26, rehearing en banc denied, on remand 767 F.Supp.2d 179. Interest ⇨ 39(2.40)

Under District of Columbia law, relevant considerations in determining whether to make an award of prejudgment interest in a breach of contract action include whether the plaintiff has been deprived of the use of the money withheld, whether he timely commenced suit, and the certainty of the amount due. *Winder v. District of Columbia*, 2008, 555 F.Supp.2d 103, affirmed 566 F.3d 209, 386 U.S.App.D.C. 26, rehearing en banc denied, on remand 767 F.Supp.2d 179. Interest ⇨ 39(2.30)

District of Columbia law permits an award of prejudgment interest when there was a contractual relationship between parties, but action was not framed as a breach of contract action. *Burlington*

Ins. Co. v. Okie Dokie, Inc., 2005, 398 F.Supp.2d 147, amended in part 439 F.Supp.2d 124. Interest ⇨ 39(2.30)

Under District of Columbia law, insurer could recover prejudgment interest in its action against insured and insurance broker for unjust enrichment, negligent misrepresentation, and declaration that coverage did not exist under insured's commercial general liability (CGL) policy. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 2005, 398 F.Supp.2d 147, amended in part 439 F.Supp.2d 124. Interest ⇨ 39(2.35)

9. Review

Former employee was not entitled to pre-judgment interest, under District of Columbia code provision allowing interest as necessary to fully compensate employee, on unliquidated debts former employer owed to her as sales commissions and other compensation; employee neither requested jury to determine interest issue nor objected to instructions that were silent as to interest, even though federal rules required jury determination regarding interest. *Fudali v. Pivotal Corp.*, 2008, 623 F.Supp.2d 11, motion denied 2009 WL 4250580, appeal dismissed 367 Fed.Appx. 165, 2010 WL 597311. Federal Civil Procedure ⇨ 2178; Interest ⇨ 66

Chapter 3

Enforcement of Judgments and Decrees.

Subchapter I. Local Judgments and Decrees.

Section

- 15–314. Appraisement; notice of sale.
- 15–320. Enforcement of decrees.

Subchapter II. Foreign Judgments.

- 15–352. Filing and status of foreign judgments.
- 15–353. Notice of filing.

Subchapter II–A. Uniform Foreign–Country Money Judgments.

- 15–361. Short title.
- 15–362. Definitions.
- 15–363. Applicability.
- 15–364. Standards for recognition of foreign-country judgment.
- 15–365. Personal jurisdiction.
- 15–366. Procedure for recognition of foreign-country judgment.

Section

- 15–367. Effect of recognition of foreign-country judgment.
- 15–368. Stay of proceedings pending appeal of foreign-country judgment.
- 15–369. Statute of limitations.
- 15–370. Uniformity of interpretation.
- 15–371. Saving clause.

Subchapter III. Uniform Foreign–Money Judgments. [Repealed]

- 15–381. Definitions. [Repealed]
- 15–382. Recognition and enforcement. [Repealed]
- 15–383. Grounds for nonrecognition. [Repealed]
- 15–384. Personal jurisdiction. [Repealed]
- 15–385. Stay in cases of appeal. [Repealed]
- 15–386. Savings clause. [Repealed]
- 15–387. Applicability. [Repealed]
- 15–388. Uniformity of application and construction. [Repealed]

SUBCHAPTER I. LOCAL JUDGMENTS AND DECREES.

§ 15-314. Appraisement; notice of sale.

Notes of Decisions

Notice of sale 1

1. Notice of sale

Even if only substantial compliance with federal statute, stating that a notice must be published once a week for at least four weeks in a newspaper of general circulation before a public sale of realty occurred, was required before judgment debtor's

real property was sold at execution judgment to satisfy judgment creditor's lien, judgment creditor failed to substantially comply with such statute, where Marshall only published notice of sale on three days during a 14-day period, judgment debtor did not receive notice of the date, time and place of the sale, and the property was sold for less than one-third of its value. *Steward v. Moskowitz*, 2010, 5 A.3d 638. Execution ⇨ 222(2)

§ 15-320. Enforcement of decrees.

Notes of Decisions

Review 6

Trademark or trade name disputes 5

1. In general

As a voluntary settlement of a disputed claim, consent decree was to be construed within its four corners and enforced as written, absent a showing of good cause to set it aside, such as fraud, duress, or mistake. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Federal Courts ⇨ 1052.1

Courts are to construe ambiguities and omissions in consent decrees as redounding to the benefit of the person charged with contempt. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 20

As with any contract, the fact finder may examine extrinsic evidence to clarify genuine ambiguities in a consent decree. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Evidence ⇨ 448

While a consent decree still must be construed within its four corners, courts have a duty to interpret ambiguous provisions, if possible, in light of what the evidence shows the parties themselves intended. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Federal Courts ⇨ 1052.1

4. Attorney fees

Trade name owner forfeited its challenge to attorney fees awarded to enforce consent decree against competitor, where owner failed to contest in the trial court the special masters' decision to recommend \$34,500 cut in request and stated that it was generally satisfied with the special masters' recommendation. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Federal Courts ⇨ 1064

The trial court had the discretion to award attorney fees reasonably incurred by trade name owner to prosecute competitor for civil contempt of con-

sent decree even absent a finding that competitor's violation of court order was willful and even absent a specific attorney's fee provision in the decree. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 68

No reversal or remand was required by the trial court's failure to articulate its reasoning further in awarding attorney fees of \$140,000 to trade name owner in proceeding to hold competitor in contempt for violating consent decree; no claim was made that the hours worked were unreasonable or unrelated to the contempt proceeding or that the attorneys' billing rates were unreasonably high, the independent special masters evaluated the legal expenses and found them to be reasonable overall, and this primarily factual finding was not shown to be clearly erroneous. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 66(7); Contempt ⇨ 66(8); Contempt ⇨ 68

Trade name owner's failure to succeed completely in its claims against competitor for violating consent decree and to win every legal ruling concerning laches defense and scope of decree did not require reduction in attorney fee award; the case was an exceptionally complex one that mandated an extensive investigation of the competitor's entire course of business conduct over many years in order to establish that noncompliance with the consent decree was truly contemptuous, the full scope of the noncompliance needed to be explored and defined, and the owner prevailed on the main point. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 68

5. Trademark or trade name disputes

Trade name owner's alleged commercial inactivity and inability to suffer loss of profits or other injury did not preclude it from enforcing its rights under consent decree that prohibited competitor from conducting business in the District of Columbia in the owner's corporate name, although the owner's alleged dormancy might have been rele-

vant if the issue had been the right to an injunction against competitor in the first place; the competitor had consented to the injunction, and the settlement agreement entitled the owner to competitor's profits without proof of actual injury. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Federal Courts ⇨ 1052.1

Lack of injury to trade name owner since it allegedly was commercially inactive and was not using the name was no defense to civil contempt against competitor for violating consent decree that prohibited competitor from conducting business in the District of Columbia in the owner's corporate name; the settlement agreement entitled the owner to competitor's profits without proof of actual injury if the competitor conducted business in the District of Columbia using owner's name. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 28(1)

Trial court ruling on trade name owner's petition to hold competitor in contempt for violating consent decree that enjoined competitor from conducting business in the District of Columbia in the owner's corporate name was in no position to dissolve the decree prospectively on the ground that the owner was an inactive business entity that no longer had an interest in its name to protect; the court had precluded the competitor from introducing evidence on whether the owner had ceased doing business. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 63(1)

Provision of consent decree requiring trade name owner's competitor to account for all profits made by it from conducting business in the District of Columbia using owner's name at any time was ambiguous and reasonably construed as applying only to sales or shipments to federal government offices that were located in the District of Columbia; the parties agreed to permit the competitor, while using the name, to continue doing business with the federal government outside the District of Columbia, and the parties and their lawyers knew that the competitor would still be required to submit bids to the General Services Administration (GSA) or proposed blanket purchase agreements to other agencies within the District as a precondition to carrying on such business elsewhere. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Federal Courts ⇨ 1052.1

Trial court ruling on laches defense could conclude that trade name owner was not vigilant and failed to exercise diligence in protecting rights under consent decree against competitor and that competitor was prejudiced by owner's delay before

seeking to hold competitor in contempt for violating consent decree entered more than twelve years earlier, and, thus, the court could limit the owner's right to recover competitor's profits to a reasonable period of time, five years, before the owner filed petition; with virtually no effort, the owner could have learned that the competitor was using the owner's name in sales to federal government offices located in the District of Columbia in violation of the decree. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 46

Trade name owner's competitor did not waive its affirmative defense of laches by failing to raise it in answer to owner's petition to enforce consent decree; the competitor put the owner on notice of its affirmative defense of laches in its summary judgment pleadings, the owner had and exercised a full and fair opportunity to meet it, and there was no prejudice. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Federal Courts ⇨ 1052.1

The doctrine of laches applied to trade name owner's petition to hold competitor in contempt for violating consent decree entered more than twelve years earlier, even though the owner owed no duty to monitor competitor's compliance with a court order. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Contempt ⇨ 46

Trade name owner failed to show clearly erroneous computation by the special masters to determine the profits that competitor earned in violation of consent decree that prohibited competitor from conducting business in the District of Columbia in the owner's corporate name; the masters carried out a massive eleven-month investigation into the extent and economic effect of competitor's non-compliance with the consent decree over a five-year period, and the owner's objections were essentially an attack on the violation criteria and the sampling technique that the masters reasonably chose to employ in order to obtain reliable results in a factually murky, retrospective investigation. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Federal Courts ⇨ 1052.1

6. Review

The trial court's resolution of the meaning of an ambiguous provision of a consent decree in light of extrinsic evidence is a factual finding that the Court of Appeals will not reverse unless it is plainly wrong or without evidence to support it. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 2003, 823 A.2d 513. Federal Courts ⇨ 1066

SUBCHAPTER II. FOREIGN JUDGMENTS.

UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT (1964)

Table of Jurisdictions Wherein 1964 Act Has Been Adopted

For text of Uniform Acts, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 13.

JUDGMENTS AND EXECUTIONS; FEES AND COSTS

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Note 6

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama	1986, No. 86-713	10-2-1986	Code 1975, §§ 6-9-230 to 6-9-238.
Alaska	1972, c. 69	8-16-1972	AS 09.30.200 to 09.30.270.
Arizona	1971, c. 80	8-13-1971	A.R.S §§ 12-1701 to 12-1708.
Arkansas	1989, No. 501	3-13-1989	A.C.A. §§ 16-66-601 to 16-66-608.
Colorado	1969, c. 198	7-1-1969	West's C.R.S.A. §§ 13-53-101 to 13-53-108.
Connecticut	1973, No. 73-498	6-17-1973	C.G.S.A. §§ 52-604 to 52-609.
Delaware	65 Del.Laws c. 333	6-30-1986	10 Del.C. §§ 4781 to 4787.
District of Columbia ...	1990, D.C.Law 8-173	10-2-1990	D.C. Official Code, 2001 Ed. §§ 15-351 to 15-357.
Florida	1984, c. 84-5	10-1-1984	West's F.S.A. §§ 55.501 to 55.509.
Georgia	1986, Act No. 1326	7-1-1986	O.C.G.A. §§ 9-12-130 to 9-12-138.
Hawaii	1983, c. 31		HRS §§ 636C-1 to 636C-8.
Idaho	1974, c. 64	7-1-1974	I.C. §§ 10-1301 to 10-1308.
Illinois	1991, P.A. 87-358	9-9-1991	S.H.A. 735 ILCS 5/12-650 to 5/12-657.
Indiana	2010, P.L.63-2010	3-17-2010*	West's A.I.C. 34-54-11-1 to 34-54-11-7.
Iowa	1979, ch. 138	1-1-1980	I.C.A. §§ 626A.1 to 626A.8.
Kansas	1970, c. 243	7-1-1970	K.S.A. §§ 60-3001 to 60-3008.
Kentucky	1990, c. 317	4-6-1990*	KRS 426.950 to 426.975.
Louisiana	1985, No. 464	7-12-1985*	LSA-R.S. 13:4241 to 13:4247.
Maine	1975, c. 335	5-22-1975	14 M.R.S.A. §§ 8001 to 8008.
Maryland	1987, c. 497	7-1-87	Code, Courts and Judicial Proceedings, § 11-801 to 11-807.
Michigan	1996, No. 502	6-1-1997	M.C.L.A. §§ 691.1171 to 691.1179.
Minnesota	1977, c. 51	7-1-1977	M.S.A. §§ 548.26 to 548.33.
Mississippi	1984, c. 403	7-1-1984	Code 1972, §§ 11-7-301 to 11-7-309.
Missouri		1-1-1988	V.A.M.R.Civ.Proc.R. 74.14.
Montana	1989, c. 66	10-1-1989	MCA 25-9-501 to 25-9-508.
Nebraska	1993, LB 458	1-1-1994	R.R.S. 1943, §§ 25-1587.01 to 25-1587.09.
Nevada	1979, c. 656	6-5-1979*	N.R.S. 17.330 to 17.400.
New Hampshire	1994, 266:1	6-6-1994	RSA 524-A:1 to 524-A:8.
New Jersey	1997, c. 204	7-14-1997	N.J.S.A. 2A:49A-25 to 2A:49A-33.
New Mexico	1989, c. 256	4-6-1989*	NMSA 1978, §§ 39-4A-1 to 39-4A-6.
New York	1970, c. 982	9-1-1970	McKinney's CPLR 5401 to 5408.
North Carolina	1989, c. 747	10-1-1989	G.S. §§ 1C-1701 to 1C-1708.
North Dakota	1969, c. 294	7-1-1969	NDCC 28-20.1-01 to 28-20.1-08.
Ohio	1983, S. 23	7-29-1983	R.C. §§ 2329.021 to 2329.027.
Oklahoma	1968, c. 170	4-15-1968	12 Okl.St.Ann. §§ 719 to 726.
Oregon	1955, c. 647	5-21-1955*	ORS 24.105 to 24.175.
Pennsylvania	1965, c. 647	5-21-1965	42 Pa.C.S.A. § 4306.
Rhode Island	1985, c. 104		Gen.Laws 1956, §§ 9-32-1 to 9-32-8.
South Carolina	1993, Act No. 80	6-11-1993	Code 1976, §§ 15-35-900 to 15-35-960.
South Dakota	1975, c. 160		SDCL 15-16A-1 to 15-16A-10.
Tennessee	1976, c. 530	3-17-1978	T.C.A. §§ 26-6-101 to 26-6-108.
Texas	1985, c. 959	9-1-1985	V.T.C.A., Civil Practice & Remedies Code §§ 35.001 to 35.008.
Utah	1983, c. 169	7-1-1983	U.C.A.1953, §§ 78B-5-301 to 78B-5-307.
Virgin Islands	1992, Act No. 5777	2-18-1992*	5 V.I.C. §§ 551 to 558.
Virginia	1988, c. 539		Code 1950, §§ 8.01-465.1 to 8.01-465.5.
Washington	1953, c. 191	3-18-1953*	West's RCWA 6.36.010 to 6.36.910.
West Virginia	1989, c. 3		Code 55-14-1 to 55-14-8.
Wisconsin	1965, c. 379	11-24-1965	W.S.A. 806.24.
Wyoming	1965, c. 47	2-11-1965	Wyo.Stat.Ann. §§ 1-17-701 to 1-17-707.

* Date of approval.

§ 15-352. Filing and status of foreign judgments.

Notes of Decisions

In general 1

Cross, 2007, 505 F.Supp.2d 143. Garnishment ⇨ 237

1. In general

Provision of the Uniform Enforcement of Foreign Judgments Act, as adopted by District of Columbia, requiring judgment creditor to file foreign judgment and any related affidavit providing identifying information about the judgment debtor with the District of Columbia Superior Court obligated California Franchise Tax Board (CFTB), as “judgment creditor,” not judgment debtor’s employer as third-party garnishee in District of Columbia, to register earnings withholding order issued by the CFTB. McDonald v. American Red

Cross, 2007, 505 F.Supp.2d 143. Garnishment ⇨ 237
Judgment debtor’s unverified motion was insufficient to vacate foreign default judgment, where motion was signed only by debtor’s counsel and not supported by affidavit or other evidence substantiating the claim that the debtor was not served in the underlying action, motion did not set forth meritorious defense to the debt underlying the judgment and, in light of the debtor’s failure to take any action until he was subpoenaed for an oral examination, no other relevant factors were present to justify vacating the judgment; motion merely invoked preference for resolving disputes on merits. Von Plinsky v. Harvey, 2003, 820 A.2d 549. Judgment ⇨ 822(1)

§ 15-353. Notice of filing.

Notes of Decisions

Construction and application 1

1. Construction and application

Provision of the Uniform Enforcement of Foreign Judgments Act, as adopted by District of Columbia, requiring judgment creditor to file foreign judgment and any related affidavit providing

identifying information about the judgment debtor with the District of Columbia Superior Court obligated California Franchise Tax Board (CFTB), as “judgment creditor,” not judgment debtor’s employer as third-party garnishee in District of Columbia, to register earnings withholding order issued by the CFTB. McDonald v. American Red Cross, 2007, 505 F.Supp.2d 143. Garnishment ⇨ 237

SUBCHAPTER II-A. UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS.

§ 15-361. Short title.

This subchapter may be cited as the “Uniform Foreign-Country Money Judgments Recognition Act of 2011”.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

Law 19-86, the “Uniform Foreign-Country Money Judgments Recognition Act of 2011”, was introduced in Council and assigned Bill No. 19-216, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 2011, and December 6, 2011, respectively. Signed by the Mayor on December 21, 2011, it was assigned Act No. 19-246

and transmitted to both Houses of Congress for its review. D.C. Law 19-86 became effective on February 24, 2012.

Uniform Law:

This section is based on § 1 of the Uniform Foreign-Country Money Judgments Recognition Act. See Vol. 13, Part II, Uniform Laws Annotated, Master Edition or ULA Database on Westlaw.

§ 15-362. Definitions.

For the purposes of this subchapter, the term:

(1) “Foreign country” means a government other than:

(A) The United States;

(B) The District of Columbia, a state, district, commonwealth, territory, or insular possession of the United States; or

(C) Any other government with regard to which the decision in the District of Columbia as to whether to recognize a judgment of that government’s courts is initially

subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) "Foreign-country judgment" means a judgment of a court of a foreign country.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19-86, see notes under § 15-361.

Act. See Vol. 13, Part II, Uniform Laws Annotated, Master Edition or ULA Database on Westlaw.

Uniform Law:

This section is based on § 2 of the Uniform Foreign-Country Money Judgments Recognition

§ 15-363. Applicability.

(a) Except as otherwise provided in subsection (b) of this section, this subchapter applies to a foreign-country judgment to the extent that the judgment:

- (1) Grants or denies recovery of a sum of money; and
- (2) Under the law of the foreign country where rendered, is:
 - (A) Final;
 - (B) Conclusive; and
 - (C) Enforceable.

(b) This subchapter does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is a:

- (1) Judgment for taxes;
- (2) Fine or other penalty; or
- (3) Judgment for:
 - (A) Divorce;
 - (B) Support or maintenance; or
 - (C) Other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this subchapter applies to the foreign-country judgment.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19-86, see notes under § 15-361.

Act. See Vol. 13, Part II, Uniform Laws Annotated, Master Edition or ULA Database on Westlaw.

Uniform Law:

This section is based on § 3 of the Uniform Foreign-Country Money Judgments Recognition

§ 15-364. Standards for recognition of foreign-country judgment.

(a) Except as otherwise provided in subsections (b) and (c) of this section, a court of the District of Columbia shall recognize a foreign-country judgment to which this subchapter applies.

(b) A court of the District of Columbia may not recognize a foreign-country judgment if the:

- (1) Judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) Foreign court did not have personal jurisdiction over the defendant; or
- (3) Foreign court did not have jurisdiction over the subject matter.

(c) A court of the District of Columbia need not recognize a foreign-country judgment, if the:

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- (1) Defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;
 - (2) Judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
 - (3) Judgment or the cause of action on which the judgment is based is repugnant to the public policy of the District of Columbia or of the United States;
 - (4) Judgment conflicts with another final and conclusive judgment;
 - (5) Proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;
 - (6) Foreign court, in the case of jurisdiction based only on personal service, was a seriously inconvenient forum for the trial of the action;
 - (7) Judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
 - (8) Specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.
- (d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) or (c) of this section exists. (Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19-86, see notes under § 15-361.

Act. See Vol. 13, Part II, Uniform Laws Annotated, Master Edition or ULA Database on Westlaw.

Uniform Law:

This section is based on § 4 of the Uniform Foreign-Country Money Judgments Recognition

§ 15-365. Personal jurisdiction.

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if the:

- (1) Defendant was served with process personally in the foreign country;
- (2) Defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;
- (3) Defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
- (4) Defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;
- (5) Defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or
- (6) Defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of the District of Columbia may recognize bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19-86, see notes under § 15-361.

Uniform Law:

This section is based on § 5 of the Uniform Foreign-Country Money Judgments Recognition

Act. See Vol. 13, Part II, Uniform Laws Annotated, Master Edition or ULA Database on Westlaw.

§ 15-366. Procedure for recognition of foreign-country judgment.

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19-86, see notes under § 15-361.

Uniform Law:

This section is based on § 6 of the Uniform Foreign-Country Money Judgments Recognition

Act. See Vol. 13, Part II, Uniform Laws Annotated, Master Edition or ULA Database on Westlaw.

§ 15-367. Effect of recognition of foreign-country judgment.

If the court in a proceeding under § 15-366 finds that the foreign-country judgment is entitled to recognition under this subchapter, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

- (1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in the District of Columbia would be conclusive; and
- (2) Enforceable in the same manner and to the same extent as a judgment rendered in the District of Columbia.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19-86, see notes under § 15-361.

Uniform Law:

This section is based on § 7 of the Uniform Foreign-Country Money Judgments Recognition

Act. See Vol. 13, Part II, Uniform Laws Annotated, Master Edition or ULA Database on Westlaw.

§ 15-368. Stay of proceedings pending appeal of foreign-country judgment.

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the:

- (1) Appeal is concluded;
- (2) Time for appeal expires; or
- (3) Appellant has had sufficient time to prosecute the appeal and has failed to do so.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19-86, see notes under § 15-361.

Uniform Law:

This section is based on § 8 of the Uniform Foreign-Country Money Judgments Recognition

Act. See Vol. 13, Part II, Uniform Laws Annotated, Master Edition or ULA Database on Westlaw.

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§ 15–369. Statute of limitations.

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country.

(Feb. 24, 2012, D.C. Law 19–86, § 2(b), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19–86, see notes under § 15–361.

Uniform Law:

This section is based on § 9 of the Uniform Foreign–Country Money Judgments Recognition

Act. See Vol. 13, Part II, Uniform Laws Annotated, Master Edition or ULA Database on Westlaw.

§ 15–370. Uniformity of interpretation.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Feb. 24, 2012, D.C. Law 19–86, § 2(b), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19–86, see notes under § 15–361.

Uniform Law:

This section is based on § 10 of the Uniform Foreign–Country Money Judgments Recognition

Act. See Vol. 13, Part II, Uniform Laws Annotated, Master Edition or ULA Database on Westlaw.

§ 15–371. Saving clause.

This subchapter does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this subchapter.

(Feb. 24, 2012, D.C. Law 19–86, § 2(b), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19–86, see notes under § 15–361.

Uniform Law:

This section is based on § 11 of the Uniform Foreign–Country Money Judgments Recognition

Act. See Vol. 13, Part II, Uniform Laws Annotated, Master Edition or ULA Database on Westlaw.

SUBCHAPTER III. UNIFORM FOREIGN-MONEY JUDGMENTS. [REPEALED]

§ 15–381. Definitions. [Repealed]

(Feb. 10, 1996, D.C. Law 11–84, § 2, 42 DCR 6787; Mar. 13, 2004, D.C. Law 15–105, § 100, 51 DCR 881; Feb. 24, 2011, D.C. Law 19–86, § 2(c), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

Law 15–105, the “Technical Amendments Act of 2003”, was introduced in Council and assigned Bill No. 15–437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15–291

and transmitted to both Houses of Congress for its review. D.C. Law 15–105 became effective on March 13, 2004.

Law 19–86, the “Uniform Foreign-Country Money Judgments Recognition Act of 2011”, was introduced in Council and assigned Bill No. 19–216, which was referred to the Committee on the Judi-

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§ 15-387 Repealed

ciary. The Bill was adopted on first and second readings on November 1, 2011, and December 6, 2011, respectively. Signed by the Mayor on December 21, 2011, it was assigned Act No. 19-246

and transmitted to both Houses of Congress for its review. D.C. Law 19-86 became effective on February 24, 2012.

§ 15-382. Recognition and enforcement. [Repealed]

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19-86, see notes under § 15-361.

§ 15-383. Grounds for nonrecognition. [Repealed]

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19-86, see notes under § 15-361.

§ 15-384. Personal jurisdiction. [Repealed]

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19-86, see notes under § 15-361.

§ 15-385. Stay in cases of appeal. [Repealed]

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For history of Law 19-86, see notes under § 15-361.

§ 15-386. Savings clause. [Repealed]

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Mar. 13, 2004, D.C. Law 15-105, § 100, 51 DCR 881; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For Law 15-105, see notes following § 15-381.

For history of Law 19-86, see notes under § 15-361.

§ 15-387. Applicability. [Repealed]

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Mar. 13, 2004, D.C. Law 15-105, § 100, 51 DCR 881; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

§ 15-387
Repealed

JUDGMENTS AND EXECUTIONS; FEES AND COSTS

Historical and Statutory Notes

Legislative History of Laws

For Law 15-105, see notes following § 15-381.

For history of Law 19-86, see notes under § 15-361.

§ 15-388. Uniformity of application and construction. [Repealed]

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Mar. 13, 2004, D.C. Law 15-105, § 100, 51 DCR 881; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Historical and Statutory Notes

Legislative History of Laws

For Law 15-105, see notes following § 15-381.

For history of Law 19-86, see notes under § 15-361.

Chapter 5

Exemptions and Trial of Right to Seized Property.

Subchapter I. Exemptions.		Section
		15-502. Mortgage or other instrument affecting exempt property.
Section		
15-501.	Exempt property of householder; property in transitu; debt for wages.	15-503. Earnings and other income; wearing apparel and tools of certain persons.

SUBCHAPTER I. EXEMPTIONS.

§ 15-501. Exempt property of householder; property in transitu; debt for wages.

(a) The following property of the head of a family or householder residing in the District of Columbia, or of a person who earns the major portion of his livelihood in the District of Columbia, being the head of a family or householder, regardless of his place of residence, is free and exempt from distraint, attachment, levy, or seizure and sale on execution or decree of any court in the District of Columbia:

(1) the debtor's interest, not to exceed \$2,575 in value, in one motor vehicle;

(2) the debtor's interest, not to exceed \$425 in value, in any particular item or \$8,625 in aggregate value in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal family or household use of the debtor or a dependent of the debtor;

(3) the debtor's aggregate interest in any property, not to exceed \$850 in value, plus up to \$8,075 of any unused amount of the exemption provided under paragraph (14) of this subsection;

(4) the debtor's aggregate interest, not to exceed \$1,625 in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor (this exemption shall also apply to merchants);

(5) any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract;

(6) professionally prescribed health aids for the debtor or a dependent of the debtor;

(7) the debtor's right to receive:

(A) a social security benefit;

(B) a veteran's benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; and

(E) a payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:

(i) the plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(ii) the payment is on account of age or length of service; and

(iii) the plan or contract does not qualify under section 401(a) or 403(b) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 *et seq.*) ("1986 Code");

(8) all family pictures; and all the family library, not exceeding \$400 in value;

(9) notwithstanding subsection (b) of this section, money or other assets payable to a participant or beneficiary from, or an interest of a participant or beneficiary in, a retirement plan qualified under sections 401(a), 403(a), 403(b), 408, 408A, 414(d), or 414(e) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 *et seq.*) ("1986 Code"), or section 409 (as in effect prior to January 1984) of the Internal Revenue Code of 1954, approved August 6, 1954 (68A Stat. 3; 26 U.S.C. § 1 *et seq.*); provided, that:

(A) this paragraph shall not apply to:

(i) an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the 1986 Code;

(ii) a retirement plan, qualified under section 401(a) of the 1986 Code, as a creditor of an individual retirement account qualified under section 408 of the 1986 Code; or

(iii) any claims by, or any indebtedness, liability, or obligation owed to, the District of Columbia;

(B) if a contribution to a retirement plan described in this paragraph exceeds the amount deductible or, in the case of a contribution under section 408A of the 1986 Code, the maximum contribution allowed under the applicable provisions of the 1986 Code, the portion of the contribution that exceeds the amount deductible or, in the case of a contribution under section 408A of the 1986 Code, the maximum contribution allowed, and any accrued earnings on such portion, are not exempt;

(10) the interest of an alternate payee in a plan described in paragraph (9) of this subsection;

(11) the debtor's right to receive property that is traceable to:

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(12) provisions for 3 months support, whether provided or growing;

(13) the library, office furniture, and implements of a professional person or artist, not exceeding \$300 in value; and

(14) the debtor's aggregate interest in real property used as the residence of the debtor, or property that the debtor or a dependent of the debtor in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or dependent of the debtor, except nothing relative to these exemptions shall impair the following debt instruments on real property: deed of trust, mortgage, mechanic's lien, or tax lien.

(b) The exemptions provided for by subsection (a) of this section are valid when the property is in transit, the same as if at rest; but property named and exempted in this section is not exempt from attachment or execution for a debt due for the wages of servants, common laborers, or clerks, except the wearing apparel, beds, and bedding and household furniture for the debtor and family.

(c) For the purpose of this section, the person who is the principal provider for the family is the head thereof.

(Dec. 23, 1963, 77 Stat. 529, Pub. L. 88-241, § 1; June 24, 2000, D.C. Law 13-129, § 4, 47 DCR 2684; Apr. 27, 2001, D.C. Law 13-292, § 702, 48 DCR 2087; Mar. 14, 2007, D.C. Law 16-270, § 3(a), 54 DCR 851.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 13-292 rewrote subsec. (a) which formerly read:

"(a) The following property of the head of a family or householder residing in the District of Columbia, or of a person who earns the major portion of his livelihood in the District of Columbia, being the head of a family or householder, regardless of his place of residence, is free and exempt from distraint, attachment, levy, or seizure and sale on execution or decree of any court in the District of Columbia:

"(1) all wearing apparel provided for all persons within the household, being members of the immediate family of the household, not exceeding \$300 per person in value;

"(2) all beds, bedding, household furniture and furnishings, sewing machines, radios, stoves, cooking utensils, not exceeding \$300 in value;

"(3) provisions for three months' support, whether provided or growing;

"(4) fuel for three months;

"(5) mechanics' tools and implements of the debtor's trade or business amounting to \$200 in value, with \$200 worth of stock or materials for carrying on the business or trade of the debtor;

"(6) the library, office furniture, and implements of a professional man or artist, not exceeding \$300 in value;

"(7) one horse or mule; one cart, wagon, or dray and harness, or one automobile or motor-controlled vehicle not exceeding \$500 in value if used principally by the debtor in his trade or business;

"(8) all family pictures; and all the family library, not exceeding \$400 in value.

"The exemption provided for by clause (5) of this subsection also applies to merchants;

"(9) notwithstanding subsection (b) of this section, money or other assets payable to a participant or beneficiary from, or an interest of a participant or beneficiary in, a retirement plan qualified under sections 401(a), 403(a), 403(b), 408, 408A, 414(d), or 414(e) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.) ('1986 Code'), or section 409 (as in effect prior to January 1984) of the Internal Revenue Code of 1954, approved August 6, 1954 (68A Stat. 3; 26 U.S.C. § 1 et seq.); provided, that:

"(A) this paragraph shall not apply to:

"(i) an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the 1986 Code;

"(ii) a retirement plan, qualified under section 401(a) of the 1986 Code, as a creditor of an individual retirement account qualified under section 408 of the 1986 Code; or

"(iii) any claims by, or any indebtedness, liability, or obligation owed to, the District of Columbia;

"(B) if a contribution to a retirement plan described in this paragraph exceeds the amount deductible or, in the case of a contribution under section 408A of the 1986 Code, the maximum contribution allowed under the applicable provisions of the 1986 Code, the portion of the contribution that exceeds the amount deductible or, in the case of a contribution under section 408A of the 1986 Code, the maximum contribution allowed, and any accrued earnings on such portion, are not exempt; and

"(10) the interest of an alternate payee in a plan described in paragraph (9) of this subsection."

D.C. Law 16-270, in subsec. (a)(14), inserted ", except nothing relative to these exemptions shall impair the following debt instruments on real property: deed of trust, mortgage, mechanic's lien, or tax lien".

Legislative History of Laws

Law 13-292, the "Omnibus Trusts and Estates Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-298, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-599 and transmitted to both Houses of Congress for its review. D.C. Law 13-292 became effective on April 27, 2001.

Law 16-270, the "Property Interest Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-671, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-626 and transmitted to both Houses of Congress for its review. D.C. Law 16-270 became effective on March 14, 2007.

Miscellaneous Notes

Section 4 of D.C. Law 16-270 provided: "Section 3 shall apply as of April 27, 2001."

Notes of Decisions

Household goods 4

Limitations 3

Personal injury proceeds 2

1. In general

When the space rented to another by the debtor is not a separate dwelling unit, such that the case is one of shared residency, and when the extent of such rentals does not change the character of the property into a commercial property, the property in its entirety should still be viewed as being used as the debtor's residence, for purposes of the District of Columbia homestead exemption. In re Springmann, 2005, 328 B.R. 251. Homestead ⇨ 35; Homestead ⇨ 71

Debtor's incidental renting of two bedrooms in his three-bedroom single-family dwelling to university students, with the students sharing a common entrance and enjoying use of the common areas of the house on a shared residency basis, did not destroy the character of those rooms as part of real property used as debtor's residence, even if debtor treated the two bedrooms on his tax returns as income-generating rental activity, and, thus, debtor could claim the full value of his home as exempt under the District of Columbia's homestead exemption. In re Springmann, 2005, 328 B.R. 251. Homestead ⇨ 35; Homestead ⇨ 71

Debtor's use of part of his basement as an office for his law practice did not render his interest in that part of the house non-exemptible under District of Columbia law. In re Springmann, 2005, 328 B.R. 251. Homestead ⇨ 35; Homestead ⇨ 71

Phrase "aggregate interest in property," as used in District of Columbia statute exempting a debtor's aggregate interest in real property used as the residence of the debtor, means the bundle of rights the debtor has in property of an exempt character. In re Springmann, 2005, 328 B.R. 251. Homestead ⇨ 81

Unlike the Bankruptcy Code's homestead exemption, which caps exemption of a debtor's aggregate interest in the debtor's residence at \$18,450.00, the District of Columbia's residence exemption is unlimited in amount. In re Springmann, 2005, 328 B.R. 251. Bankruptcy ⇨ 2774; Homestead ⇨ 62

Where, as result of legislative error or omission, District of Columbia exemption statute purported to exempt debtor's right to receive property "traceable to...a payment...of the debtor," without otherwise specifying what types of payments statute was meant to cover, and where no legislative history existed to explain what legislature intended, bankruptcy court could not, under guise of statutory construction, fabricate an exemption that statute's plain language did not create; rather, statute was gibberish and could not be used by debtor to exempt anything. In re Lewis, 2004, 305 B.R. 610. Constitutional Law ⇨ 2522(1); Exemptions ⇨ 4; Exemptions ⇨ 37

Phrase "unused amount," as used in District of Columbia "wildcard" exemption allowing debtor to exempt his or her aggregate interest in property, not to exceed \$850, plus up to \$8,075 of any "unused amount" of District of Columbia homestead exemption, had to be interpreted, in light of amendment to District of Columbia homestead statute that removed \$16,150 cap on homestead exemption and allowed exemption in unlimited amount, not as permitting all debtors who have exempted their equity in residence (in whatever amount) an automatic wildcard exemption of \$850 plus \$8,075, and not as though \$16,150 cap on District of Columbia homestead exemption cap were still in place; rather, court would interpret phrase to limit debtors who had \$8,075 or more of equity in their residence, and who had claimed that equity as exempt, to "wildcard" exemption in amount of \$850. In re McDonald, 2002, 279 B.R. 382. Exemptions ⇨ 12; Exemptions ⇨ 36

Phrase "unused amount," as used in District of Columbia "wildcard" exemption allowing debtor to exempt his or her aggregate interest in property, not to exceed \$850, plus up to \$8,075 of any "unused amount" of District of Columbia homestead exemption, could not be interpreted, in manner inconsistent with bankruptcy "wildcard" exemption on which it was based, to limit District of Columbia "wildcard" exemption to debtors with residence. In re McDonald, 2002, 279 B.R. 382. Exemptions ⇨ 12; Exemptions ⇨ 36

2. Personal injury proceeds

Debtor who filed for Chapter 7 bankruptcy was not entitled to unlimited exemption for proceeds of personal injury settlement, under District of Columbia statute, exempting "debtor's right to receive property that is traceable to" a payment "of the debtor," since statute could not be read to exempt property traceable to payment "to" debtor as that would allow debtor to exempt all property traceable to payments made to her without any limitation as to character of payments, and without specifying source of payment to be exemptible such exemption would swallow rule. Howell-Robinson v. Albert, 2008, 384 B.R. 19, appeal dismissed 2008 WL 4826032. Exemptions ⇨ 37

Under District of Columbia law, the debtor's right to receive property that is traceable to a payment of the debtor does not create any cognizable bankruptcy exemption for personal injury proceeds. Howell-Robinson v. Albert, 2008, 384 B.R. 19, appeal dismissed 2008 WL 4826032. Exemptions ⇨ 37

3. Limitations

Under District of Columbia statute allowing debtor to exempt debtor's aggregate interest in any property, not to exceed \$850 in value, plus up to \$8,075 of any unused amount of exemption for debtor's aggregate interest in real property used as debtor's residence, debtors' exemption was limited to \$850 for each debtor after debtors claimed as exempt entire amount of their equity in resi-

§ 15-501

Note 3

dence, as well as their non-equity interests in property, leaving no unused portion of their exemption for their residential property. In re Wade, 2012, 466 B.R. 20. Homestead ⇨ 62

4. Household goods

Chapter 7 debtors had to turn over to trustee household goods which they had lumped together in claiming them as exempt under District of Columbia statute, which permitted exemption of

“debtor’s interest, not to exceed \$425 in value, in any particular item or \$8,625 in aggregate value” in household goods, but had valued at amount exceeding \$425, without claiming exemption amounts for individual items, although debtors were entitled to recover exemptible amount out of proceeds of such property. In re Wade, 2012, 466 B.R. 20. Bankruptcy ⇨ 2793; Bankruptcy ⇨ 2794.1; Bankruptcy ⇨ 3063.1

JUDGMENTS AND EXECUTIONS; FEES AND COSTS

§ 15-502. Mortgage or other instrument affecting exempt property.

(a) A mortgage, deed of trust, assignment for the benefit of creditors, or bill of sale upon exempted articles is not binding or valid unless it is signed by the spouse or domestic partner of a debtor who is living with his or her spouse or domestic partner. This section shall not apply to instruments related to property exempted in § 15-501(a)(14).

(b) For the purposes of this section, the term “domestic partner” shall have the same meaning as provided in § 32-701(3).

(Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1; Oct. 1, 1976, D.C. Law 1-87, § 11, 23 DCR 2544; Apr. 4, 2006, D.C. Law 16-79, § 3, 53 DCR 1035; Mar. 2, 2007, D.C. Law 16-191, § 131(a), 53 DCR 6794; Mar. 14, 2007, D.C. Law 16-270, § 3(b), 54 DCR 851.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 16-79 rewrote section, which had read as follows:

“A mortgage, deed of trust, assignment for the benefit of creditors, or bill of sale upon exempted articles is not binding or valid unless it is signed by the spouse of a debtor who is married and living with his or her spouse.”

D.C. Law 16-191, in subsec. (a), validated a previously made technical correction.

D.C. Law 16-270, in subsec. (a), inserted “This section shall not apply to instruments related to property exempted in § 15-501(a)(14).”

Legislative History of Laws

Law 16-79, the “Domestic Partnership Equality Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-52 which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on December

6, 2005, and January 4, 2006, respectively. Signed by the Mayor on January 26, 2006, it was assigned Act No. 16-265 and transmitted to both Houses of Congress for its review. D.C. Law 16-79 became effective on April 4, 2006.

Law 16-191, the “Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

For Law 16-270, see notes following § 15-501.

Miscellaneous Notes

Section 4 of D.C. Law 16-270 provided: “Section 3 shall apply as of April 27, 2001.”

§ 15-503. Earnings and other income; wearing apparel and tools of certain persons.

(a) The earnings (other than wages, as defined in subchapter III of Chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempted, not to exceed \$200 each month, of a person residing in the District of Columbia, or of a person who earns the major portions of his livelihood in the District of Columbia, regardless of place of residence, who provides the principal support of a family, for two months next preceding the issuing of any writ or process against him, from any court or officer of and in the District, are exempt from attachment, levy, seizure, or sale upon the process, and may not be seized, levied on, taken, reached, or sold by process or proceedings of any court, judge, or other officer of and in the District. Where spouses or domestic partners are living together, the aggregate of the earnings, insurance, annuities, and pension or retirement payments of the spouses or domestic partners is the amount which shall be determinative of the exemption of either in cases arising ex contractu.

(b) The earnings (other than wages, as defined in subchapter III of Chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempt, not to exceed

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\$60 each month for two months preceding the date of attachment of persons residing in the District of Columbia, or of persons who earn the major portions of their livelihood in the District of Columbia, regardless of place of residence, who do not provide for the support of a family, are entitled to like exemption from attachment, levy, seizure, or sale. All wearing apparel belonging to such persons, not exceeding \$300 in value, and mechanic's tools not exceeding \$200 in value, are also exempt.

(c) Notwithstanding any other provision of law, the wages (as defined in section 16-571 of the District of Columbia Official Code) of any person not residing in the District of Columbia who does not earn the major portion of such wages in the District of Columbia shall, in any case arising out of a contract or transaction entered into outside of the District of Columbia, be exempt from attachment, levy, or seizure, by any process or proceeding of any court, judge, or officer of the District of Columbia in the same amount and to the same extent as is provided by law of the State in which such person resides for persons residing therein. Whenever any claim is made for an exemption from attachment pursuant to this subsection, the burden shall be upon the plaintiff to prove that the contract or transaction involved in the case was entered into within the District of Columbia.

(d) A notice of claim of exemption, or motion to quash attachment or other process against exempt property or money, may be filed in the office of the clerk of the court either by the debtor, his spouse or domestic partner, or a garnishee. Thereupon, the court, after due notice, shall promptly act upon the notice, motion, or other claim of exemption.

(e) For the purposes of this section, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1; Oct. 21, 1970, 84 Stat. 1066, Pub. L. 91-475; Sept. 12, 2008, D.C. Law 17-231, § 19, 55 DCR 6758.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 17-231, in subsec. (a), substituted "spouses or domestic partners" for "husband and wife"; in subsec. (d), substituted "spouse or domestic partner" for "spouse"; and added subsec. (e).

Legislative History of Laws

Law 17-231, the "Omnibus Domestic Partnership Equality Amendment Act of 2008", was intro-

duced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

Chapter 7

Fees and Costs.

Section

- 15-701. Compensation taxed as costs; attorneys' compensation from clients.
15-703. Security for costs by nonresidents.

Section

- 15-714. Witness fees for attendance in Superior Court.
15-718. Juror fees.
15-719. Adoption court costs and fees.

§ 15-701. Compensation taxed as costs; attorneys' compensation from clients.

Notes of Decisions

Bad faith exception 1.5
Fee-shifting 1.3
Review 2

1. In general

Breach of contract entitled prevailing party to attorney fees without reduction to mirror time

spent by non-prevailing party's attorneys in litigating summary judgment motions; nothing required a mirror-image test for time spent by attorneys, and given prevailing party's complete success on the merits, it was neither unreasonable nor an abuse of discretion for the trial judge to conclude that its attorneys had appropriately spent more time. National Ass'n of Postmasters of U.S. v.

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Hyatt Regency Washington, 2006, 894 A.2d 471, on remand 2006 WL 6269542. Federal Courts ⇨ 1052.1

Fourteen-day limitations period governing motion for attorney fees as prevailing party began to run when judgment was entered in favor of personal representative of shooting victim's estate in action against District of Columbia and police officers for assault and battery, negligence per se, and excessive use of force under §§ 1983, absent motion for extension of time to file motion or any indication that trial court entered order sua sponte extending 14-day limit. District of Columbia v. Jackson, 2005, 878 A.2d 489. Federal Courts ⇨ 1052.1

Even if Attorney-Client Arbitration Board found that client had not signed contingent-fee agreement for law firm's representation of client in client's personal injury action, Board could award law firm an attorney fee based on lodestar method of determining fees or based on quantum meruit theory. Schwartz v. Chow, 2005, 867 A.2d 230. Alternative Dispute Resolution ⇨ 235

Client's trial counsel and appellate counsel for personal injury action and for seven other matters did not show it was probable that Attorney-Client Arbitration Board manifestly disregarded the law or exceeded its powers when it made lump-sum award of attorney fees to counsel, and thus, court would not attempt to analyze the reasoning process of Board, which made lump-sum award without explanation of grounds for decision; while counsel believed that Board's rationale must have been that professional conduct rule, enacted after client entered into contingent-fee agreement with trial counsel, required written notice to client of fee-sharing agreement between trial and appellate counsel, and while counsel believed retroactive application of rule disregarded the law and exceeded Board's powers, client presented plausible alternative rationales for Board's lump-sum award, i.e., that fees were awarded under lodestar method or under quantum meruit theory, and court would not speculate regarding Board's rationale. Schwartz v. Chow, 2005, 867 A.2d 230. Alternative Dispute Resolution ⇨ 316; Alternative Dispute Resolution ⇨ 329

Trade name owner forfeited its challenge to attorney fees awarded to enforce consent decree against competitor, where owner failed to contest in the trial court the special masters' decision to recommend \$34,500 cut in request and stated that it was generally satisfied with the special masters' recommendation. Federal Marketing Co. v. Virginia Impression Products Co., Inc., 2003, 823 A.2d 513. Federal Courts ⇨ 1064

The trial court had the discretion to award attorney fees reasonably incurred by trade name owner to prosecute competitor for civil contempt of consent decree even absent a finding that competitor's violation of court order was willful and even absent a specific attorney's fee provision in the decree. Federal Marketing Co. v. Virginia Impression Products Co., Inc., 2003, 823 A.2d 513. Contempt ⇨ 68

The determination of the reasonableness of the amount of an attorneys' fee award is left to the sound discretion of the trial court. Federal Marketing Co. v. Virginia Impression Products Co., Inc., 2003, 823 A.2d 513. Federal Courts ⇨ 1052.1

In most situations, a reasonable attorney fee is computed by first determining the so-called lodestar—the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate—and then, in exceptional cases, making upward or downward adjustments as appropriate. Federal Marketing Co. v. Virginia Impression Products Co., Inc., 2003, 823 A.2d 513. Federal Courts ⇨ 1052.1

Trade name owner's failure to succeed completely in its claims against competitor for violating consent decree and to win every legal ruling concerning laches defense and scope of decree did not require reduction in attorney fee award; the case was an exceptionally complex one that mandated an extensive investigation of the competitor's entire course of business conduct over many years in order to establish that noncompliance with the consent decree was truly contemptuous, the full scope of the noncompliance needed to be explored and defined, and the owner prevailed on the main point. Federal Marketing Co. v. Virginia Impression Products Co., Inc., 2003, 823 A.2d 513. Contempt ⇨ 68

A trial court has an inherent sanctioning power that transcends specific statutes or rules and extends to the full range of litigation abuses. In re Estate of Delaney, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

Courts are to exercise their inherent powers to sanction by awarding attorneys fees with restraint and discretion. In re Estate of Delaney, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

A court may award attorney fees, as sanctions, against a party who has acted in bad faith, vexatiously, wantonly, or for oppressive reasons in connection with the litigation. In re Estate of Delaney, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

The bad faith exception to the general rule that each party pays its own attorney fees is intended to punish those who have abused the judicial process and to deter those who would do so in the future. In re Estate of Delaney, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

Courts may award attorney fees as a sanction against a party who exhibits a willful disobedience of a court order. In re Estate of Delaney, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

In awarding attorney fees as a sanction, a party is not to be penalized by the court for maintaining an aggressive litigation posture, nor are good faith

assertions of colorable claims or defenses to be discouraged. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

In attempting to deter bad faith litigation through attorney fee awards, the court must scrupulously avoid penalizing a party for a legitimate exercise of the right of access to the courts. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

The standards of bad faith, as basis for imposing attorney fees as sanction, are necessarily stringent. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

The American Rule, which requires each party to bear its own attorney fees, serves to ensure that no individual will be deterred from bringing legal action for fear of losing and being forced to pay substantial legal fees for the other side. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

The awarding of attorney fees for bad faith litigation is proper only under extraordinary circumstances or when dominating reasons of fairness so demand. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

Even if will contest brought by decedent's alleged common law wife could be construed as violating court order admitting will into probate, alleged wife had at least colorable claim, and thus, imposition of attorney fees as sanction for bad faith conduct was not warranted; initial claims were based on some facts that tended to support her claim of forged will, and her later pleadings argued for modification of existing law by either applying discovery rule to statutory time limitations for challenging a will or using fraud statute of limitations in the probate proceeding. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

A claim is colorable, so that imposition of sanctions for bad faith conduct is not warranted, when it has some legal and factual support. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

The question, when determining whether a claim was brought in bad faith so that sanctions are warranted, is whether a reasonable attorney could have concluded that facts supporting the claim might be established, not whether such facts actually had been established. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

Sanctions for bad faith conduct should not be imposed unless it is patently clear that a claim had absolutely no chance of success prior to filing. In

re Estate of Delaney, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

Conduct of successor counsel for decedent's alleged common law wife, in relying on information from alleged wife when asserting her probate claims as a common law wife, after predecessor counsel had failed to order transcription of deposition in which alleged wife had given testimony undercutting her claim of common law wife status, did not warrant imposition of sanctions for bad faith conduct. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

It is not sanctionable behavior, as basis for award of attorney fees to opposing party, for an attorney to file a complaint based solely on the oral representation of his client without the benefit of independent corroboration. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

Conduct of decedent's alleged common law spouse, in interfering with witness in probate proceeding by discussing with witness the witness' testimony, did not warrant imposition of sanctions; the witness, who was chief executive officer (CEO) of small credit union, was a responsible adult capable of obeying probate court order not to discuss her testimony with anyone, and such order was directed at the witness, not at the alleged wife. In *re Estate of Delaney*, 2003, 819 A.2d 968, certiorari denied 124 S.Ct. 1075, 540 U.S. 1109, 157 L.Ed.2d 896. Federal Courts ⇨ 1052.1

A finding of bad faith in prosecuting claims, as basis for award of attorney fees to opposing party, must be supported by clear and convincing evidence. *Fischer v. Estate of Flax*, 2003, 816 A.2d 1. Costs ⇨ 207

The award of attorney fees as a deterrent to bad faith litigation, as an exception to the American Rule under which each party pays its own attorney fees, operates only in extraordinary cases. *Fischer v. Estate of Flax*, 2003, 816 A.2d 1. Costs ⇨ 194.16

Evidence established brewery owner's bad faith in prosecuting claim for tortious interference with prospective economic advantage against defendant finder of securities underwriter for brewery owner's financing, and thus, defendant finder was entitled to attorney fee award for bad faith litigation; owner was involved in creating backdated or false letters to support owner's assertion that defendant finder had scuttled the financing because another finder had contacted underwriter first and defendant finder therefore knew he would not receive a finder's fee. *Fischer v. Estate of Flax*, 2003, 816 A.2d 1. Costs ⇨ 207

A claim is "colorable," so that prosecution of the claim does not constitute bad faith which would warrant an attorney fee award to the opposing party, where the claim has some legal and factual support, considered in light of the reasonable be-

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liefs of the individual making the claim. *Fischer v. Estate of Flax*, 2003, 816 A.2d 1. Costs ⇨ 194.44

Attorney fees and costs payable by plaintiffs following voluntary dismissal without prejudice are limited to the amount expended for work that cannot be applied to the subsequent lawsuit concerning the same claims, and this amount must be supported by evidence in the record. *Thoubboron v. Ford Motor Co.*, 2002, 809 A.2d 1204. Federal Courts ⇨ 1052.1

Reasonableness of defendant's attorney fees and costs as determined by Court of Appeals in prior appeal could not be raised in subsequent appeal. *Thoubboron v. Ford Motor Co.*, 2002, 809 A.2d 1204. Federal Courts ⇨ 1066

It is for the trial court to exercise its discretion in the first instance, applying the proper factors, to determine whether party's delay in filing motion for attorney fees was due to excusable neglect. *Breiner v. Daka, Inc.*, 2002, 806 A.2d 180. Costs ⇨ 199

Awarding prevailing employer \$1,500 in costs for former employee's defamation claim and \$7,342.72 in costs for former employee's discrimination claim was not abuse of discretion, given that amount requested by employer for such claims was \$7,282.72 and \$22,226.23, respectively. *Wallace v. Skadden, Arps, Slate, Meagher & Flom LLP*, 2002, 799 A.2d 381. Civil Rights ⇨ 1773; Libel And Slander ⇨ 129

Decision to award costs to prevailing party is discretionary one. *Wallace v. Skadden, Arps, Slate, Meagher & Flom LLP*, 2002, 799 A.2d 381. Costs ⇨ 12

Former husband was not entitled to award of attorney fees, pursuant to separation and property settlement agreement providing for fee-shifting in favor of a party who successfully brought an action to enforce or implement the terms of the agreement, though trial court denied former wife's motion to modify a child custody order and former husband had brought a counterclaim alleging former wife had not shown grounds for modification and that former wife had interfered with former husband's custodial rights; the trial court did not find that former wife had interfered with former husband's custodial rights, the relief the trial court ordered was no different than if former husband had successfully defended against custody modification but had filed no counterclaim, the fee-shifting provision did not apply to defense of claims, and former husband's counterclaim could not be construed as an action to enforce or implement the agreement. *Fritz v. Grise*, 2002, 797 A.2d 710. Child Custody ⇨ 943

Even assuming that a trial court, in a child custody matter, may override a contractual attorney fee provision when the interests of a child dictate, former husband was not entitled to attorney fees for successfully defending against former wife's motion to modify child custody, where former husband made no showing that his ability to care for the children was impaired by the cost of

defending against former wife's motion. *Fritz v. Grise*, 2002, 797 A.2d 710. Child Custody ⇨ 943

Awarding \$750 in attorney fees to father's counsel based upon emergency motion for continuance filed by mother's counsel was abuse of discretion, where mother's counsel was not provided with meaningful opportunity to argue against imposition of any such sanctions against her and trial court failed to make finding that mother's counsel acted in bad faith, vexatiously, wantonly, or for oppressive reasons in seeking continuance at almost last minute. *Delacruz v. Harris*, 2001, 780 A.2d 262. Costs ⇨ 2

In absence of statutory or rule authority, attorney fees generally are not allowed as element of damages, costs, or otherwise; there are few limited exceptions to this general rule, including that court in its discretion may award attorney fees to prevailing party if conduct of nonprevailing party is willfully fraudulent, in bad faith, vexatious, wanton, or oppressive. *Delacruz v. Harris*, 2001, 780 A.2d 262. Costs ⇨ 194.16; Costs ⇨ 194.44

Attorney fees should not be assessed lightly or without fair notice and opportunity for hearing on record; attorney is entitled at least to meaningful opportunity to argue, either in open court or on paper, against imposition of any such sanctions against him. *Delacruz v. Harris*, 2001, 780 A.2d 262. Attorney And Client ⇨ 24; Costs ⇨ 2

Under the "American Rule," litigants, win or lose, bear their own fees. In re *Estate of King*, 2001, 769 A.2d 771. Costs ⇨ 194.16

The bad faith exception to the "American Rule" applies where a party withholds action to which the opposing party is patently entitled because of a fiduciary relationship, and does so in bad faith, vexatiously, wantonly, or for oppressive reasons. In re *Estate of King*, 2001, 769 A.2d 771. Costs ⇨ 194.44

1.3. Fee-shifting

Holders of notes and deeds of trust and trustees named in the deeds were not entitled to their incurred attorney fees pursuant to fee-shifting language in the notes and deeds, in unsuccessful action brought by estate of corporation's sole shareholder seeking to set aside foreclosure sales on deeds of trust on real estate that had been held in corporation's name; note provided for fee-shifting if the note was placed with an attorney for collection but estate's action was not a collection action, shareholder had only guaranteed such note and was not bound by the note's separate covenants and undertakings, and foreclosure sales had already occurred and holders and defendants were not seeking a judgment against the estate in the estate's action. *Estate of Raleigh v. Mitchell*, 2008, 947 A.2d 464. Mortgages ⇨ 377

1.5. Bad faith exception

Under District of Columbia law, even if lenders' agent could recover attorney fees and costs as a sanction for borrower's alleged litigation misconduct under the bad faith exception to the American Rule, such an award would not amount to compen-

sable damages flowing from borrower's alleged pre-litigation fraud and misrepresentation; rather, such an award would represent sanctions. *Sloan v. Urban Title Services, Inc.*, 2011, 770 F.Supp.2d 210. Costs ⇨ 2; Damages ⇨ 72

Attorneys were entitled to award of attorney fees not limited to expenses related to client's bad faith litigation tactics; client's bad faith litigation tactics commenced on date of its first legal malpractice filing against attorneys, when it alleged in its complaint that had attorneys conducted competent and thorough investigation of employee's allegations that litigation documents were forged, attorneys would have discovered that such allegations were untrue, and bad faith allegation was enough to completely taint client's entire litigation strategy from date complaint was filed. *Breezevale Ltd. v. Dickinson*, 2005, 879 A.2d 957, certiorari denied 126 S.Ct. 1053, 546 U.S. 1093, 163 L.Ed.2d 860. Costs ⇨ 194.44

District of Columbia applies the general principles of, and bad faith exception to, the "American rule" on attorney fees, under which a prevailing litigant ordinarily may not recover attorney fees from the defeated party when a case is concluded. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

Bad faith exception to "American rule" for attorney fees does not allow trial judge to sanction litigants for bringing colorable claims when they also happen to have other ulterior motives of questionable propriety. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

Trial judge's recognition that both parties had arguably abused judicial system to ventilate personal grievances was proper support for decision to deny one party's request for attorney fees as sanction for opposing party's alleged bad faith; such balancing of equities was fully appropriate under bad faith exception to the "American rule" for attorney fees. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

Sister's allegation in affidavit, submitted in action against her brothers for intentional infliction of emotional distress, that both brothers threatened her did not render affidavit a sham for purposes of determining whether brothers were entitled to attorney fees as sanction for sister's bad faith, even though evidence revealed that only one brother made the allegedly threatening statement; statement in affidavit was consistent with assertion that, by remaining silent, one brother adopted the other brother's words. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

Generally speaking, the failure of proof at trial cannot, without more, be a basis for a finding of bad faith for purposes of exception to the "American rule" for attorney fees. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

In determining whether plaintiff's action was brought in bad faith, for purposes of exception to the "American rule" for attorney fees, trial court properly considered fact that plaintiff's claim survived summary judgment; such analysis was con-

sistent with court's obligation to ascertain whether plaintiff's claim was colorable. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

Party's bad faith in the maintenance of a colorable action, thus permitting award of attorney fees, may manifest itself through procedural "maneuvers" lacking justification or for an improper purpose, such as harassment or delay. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

In determining whether a claim is colorable for purposes of bad faith exception to the "American rule" for attorney fees, the question is whether a reasonable attorney could have concluded that facts supporting the claim might be established, not whether such facts actually had been established at the time the complaint was filed. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

A claim is "colorable," for purposes of bad faith exception to the "American rule" for attorney fees, when it has some legal and factual support, considered in light of the reasonable beliefs of the individual making the claim. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

To ascertain whether a litigant has initiated an action in bad faith, for purposes of exception to the "American rule" for attorney fees, the court examines whether the claim is entirely without color and has been asserted wantonly, for purposes of harassment or delay, or for other improper reasons. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

Bad faith, for purposes of exception to the "American rule" for attorney fees, may be found either in the initiation of a frivolous claim or in the manner in which a properly filed claim is subsequently litigated. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

Party alleging bad faith for purposes of exception to the "American rule" for attorney fees bears a "heavy burden" of proof. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

Judicial circumspection in awarding attorney fees under the bad faith exception to the "American rule" for attorney fees is necessary to safeguard a litigant's right of access to the courts. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

In vindicating its authority through bad faith exception to the "American rule" for attorney fees, the court must scrupulously avoid penalizing litigants for aggressively litigating their claims or discouraging good faith assertions of colorable claims and defenses. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

Bad faith exception to the "American rule" for attorney fees contemplates the award or denial of attorney fees to punish abuses of the judicial process and deter future misconduct. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

Assessment of attorney fees under bad faith exception to the "American rule" for attorney fees transcends the relations between litigants and reaches the court's inherent power to vindicate

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Note 1.5

judicial authority without resort to the more drastic sanctions available for contempt. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

Under bad faith exception to the “American rule” for attorney fees, party’s bad faith conduct must be so egregious that fee shifting becomes warranted as a matter of equity. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

Bad faith exception to the “American rule” for attorney fees allows a court to award attorney fees to the prevailing party if the defeated opponent acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1052.1

2. Review

Attorney fee award of \$178,100 for hotel was not an abuse of discretion in suit against customer for canceling contracts for conferences, even though the award included time spent on suit in Illinois; the customer claimed that Illinois was inconvenient forum and filed suit in the District of Columbia. *National Ass’n of Postmasters of U.S. v. Hyatt Regency Washington*, 2006, 894 A.2d 471, on remand 2006 WL 6269542. Federal Courts ⇨ 1052.1

Rule that 14-day limitations period for filing motion for attorney fees after entry of judgment began again after entry of new judgment following reversal or remand by the Court of Appeals did not apply to motion for fees filed after Court of Appeals affirmed judgment in favor of shooting victim’s estate, in action brought against District of Columbia and police officers for assault and battery, negligence per se, and excessive use of force. *District of Columbia v. Jackson*, 2005, 878 A.2d 489. Federal Courts ⇨ 1052.1

Appellate review of trial court’s ultimate decision to deny attorney fees as sanction for bad faith is confined to a determination of whether the trial court failed to consider a relevant factor, whether it relied upon an improper factor, and whether the reasons given reasonably support the conclusion.

JUDGMENTS AND EXECUTIONS; FEES AND COSTS

Jung v. Jung, 2004, 844 A.2d 1099. Federal Courts ⇨ 1066

Appellate review of trial court’s grant or denial of attorney fees as sanction for bad faith is limited; the predicate finding of bad faith vel non is a factual one which is to be reviewed under the clearly erroneous standard, and the decision to award fees will be reversed only for abuse of discretion. *Jung v. Jung*, 2004, 844 A.2d 1099. Federal Courts ⇨ 1066

De novo standard of review applied to the trial court’s denial of motion for attorney fees and costs, as the appeal presented a question of law. *Pride Transport, Inc. v. Northeastern Pennsylvania Shippers Co-op. Ass’n, Inc.*, 2003, 832 A.2d 163. Federal Courts ⇨ 1066

A decision to award costs is committed to the trial court’s discretion, and, upon review, it is not for the appellate court to substitute its discretion for that of the trial court. *Pride Transport, Inc. v. Northeastern Pennsylvania Shippers Co-op. Ass’n, Inc.*, 2003, 832 A.2d 163. Costs ⇨ 12; Federal Courts ⇨ 1066

Judgment creditor’s unsuccessful appeal against garnishee was not frivolous and did not entitle garnishee to attorney fees, particularly in light of the fact that the trial court did not explain the reasons for its disposition of the motion before it. *Pride Transport, Inc. v. Northeastern Pennsylvania Shippers Co-op. Ass’n, Inc.*, 2003, 832 A.2d 163. Costs ⇨ 260(5)

The predicate finding of bad faith in prosecuting claims, as basis for award of attorney fees to opposing party, is a factual one which the appellate court reviews under the clearly erroneous standard. *Fischer v. Estate of Flax*, 2003, 816 A.2d 1. Federal Courts ⇨ 1066

The decision to award attorney fees to a party, based on opposing party’s bad faith in prosecuting claims, will be reversed only for abuse of discretion. *Fischer v. Estate of Flax*, 2003, 816 A.2d 1. Federal Courts ⇨ 1066

§ 15-703. Security for costs by nonresidents.

Notes of Decisions

In general 1

1. In general

Trial court’s interlocutory order in nonresident attorney’s breach of contract action against purported partner, requiring attorney to deposit additional \$5000 into court registry as security for

costs of accounting, was a discretionary ruling and, thus, did not warrant immediate review under the collateral order doctrine; statute authorizing trial court to increase security upon application placed decision as to whether security should be increased within discretion of the trial judge. *Landise v. Mauro*, 2007, 927 A.2d 1026. Federal Courts ⇨ 1062

§ 15-714. Witness fees for attendance in Superior Court.

Notes of Decisions

Review 1.5

denied 130 S.Ct. 474, 175 L.Ed.2d 317. Witnesses
 ⇌ 25

1. In general

It is improper for the government to pay fees to witnesses called solely for prosecutorial interrogation. *Perez v. U.S.*, 2009, 968 A.2d 39, certiorari denied 130 S.Ct. 473, 175 L.Ed.2d 317, certiorari

1.5. Review

An order striking a post-judgment certification of attendance of witnesses, which certification is filed for purposes of recovering witness fees, is final and appealable. *In re Estate of Corsetti*, 2007, 928 A.2d 691. Federal Courts ⇌ 1062

§ 15-718. Juror fees.

(a) A juror serving in the Superior Court of the District of Columbia shall be paid an attendance fee of \$30 for each day of actual attendance at the place of trial or hearing, except that jurors employed by a federal, state, or local government or by a private employer who pays regular compensation during the period of jury service shall not be paid an attendance fee. A person summoned for petit jury service in the Superior Court of the District of Columbia who does not serve on the petit jury shall not be paid an attendance fee.

(b) A travel allowance not to exceed \$2 per day shall be paid to all jurors serving in the Superior Court of the District of Columbia.

(c) For jury service of 5 days or less, petit or grand jurors employed full-time in the District of Columbia shall be entitled to their usual compensation less the fee received for jury service. A person shall not be considered a full-time employed juror on any day of jury service in which that person:

(1) Would not have accrued regular wages to be paid by the employer if the employee were not serving as a juror on that day; or

(2) Would not have worked more than 1/2 of a shift that extends into another day if the employee were not serving as a juror on that day. Employers with 10 or less employees shall not be required to pay a juror-employee his or her usual compensation.

(d) If an employer fails to pay an employee in violation of subsection (c) of this section, the employee may bring a civil action for recovery of wages or salary lost as a result of the violation. If an employee prevails in an action under this subsection, that employee shall be entitled to reasonable attorney fees fixed by the court.

(e) The Board of Judges of the Superior Court may increase the attendance fee and travel allowance provided by this section and, in such event, shall publish the new fee or allowance.

(Mar. 9, 1988, D.C. Law 7-81, § 2(c), 34 DCR 8115; Aug. 17, 1991, D.C. Law 9-19, title I, § 104, 38 DCR 4066; Aug. 17, 1991, D.C. Law 9-43, § 2, 38 DCR 4985; Aug. 25, 1994, D.C. Law 10-156, § 2, 41 DCR 4876; Mar. 14, 2007, D.C. Law 16-272, § 2(a), 54 DCR 856.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 16-272 added subsec. (e).

Legislative History of Laws

Law 16-272, the "Jury Trial Improvements Act of 2006", was introduced in Council and assigned Bill No. 16-700, which was referred to Committee

on Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-628 and transmitted to both Houses of Congress for its review. D.C. Law 16-272 became effective on March 14, 2007.

§ 15-719. Adoption court costs and fees.

Any person who files a petition pursuant to Chapter 3 of Title 16 to adopt a child who is a respondent in a neglect proceeding or who has been adjudicated to be neglected as defined in Chapter 23 of Title 16 shall not be required to pay court costs or fees in the Superior Court of the District of Columbia.

(Apr. 4, 2001, D.C. Law 13-273, § 2(c), 48 DCR 1637.)

Historical and Statutory Notes

Temporary Addition of Section

Section 2(b) of D.C. Law 13-208 added this section.

Section 5(b) of D.C. Law 13-208 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) addition of this section, see § 2(b) of the Foster Children's Guardianship Legislative Review Emergency Act of 2000 (D.C. Act 13-490, November 29, 2000, 48 DCR 63).

For temporary (90 day) addition of § 15-719, see § 2(b) of the Foster Children's Guardianship Legislative Review Emergency Amendment Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 45).

For temporary (90 day) addition of section, see § 2(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

Legislative History of Laws

Law 13-208, the "Foster Children's Guardianship Temporary Act of 2000", was introduced in Council and assigned Bill No. 13-762, which was retained by Council. The Bill was adopted on first and second readings on July 11, 2000, and October 3, 2000, respectively. Signed by the Mayor on October 24, 2000, it was assigned Act No. 13-457 and transmitted to both Houses of Congress for its review. D.C. Law 13-208 became effective on March 31, 2001.

Law 13-273, the "Foster Children's Guardianship Act of 2000", was introduced in Council and assigned Bill No. 13-763, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 16, 2001, it was assigned Act No. 13-566 and transmitted to both Houses of Congress for its review. D.C. Law 13-273 became effective on April 4, 2001.

Chapter 9

Uniform Foreign-Money Claims.

Section

- 15-901. Definitions.
15-902. Variation by agreement.
15-912. Supplementary general principles of law.

Section

- 15-913. Applicability.
15-914. Uniformity of application and construction.

UNIFORM FOREIGN-MONEY CLAIMS ACT

Table of Jurisdictions Wherein Act Has Been Adopted

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 13.

Jurisdiction	Laws	Effective Date	Statutory Citation
California	1991, c. 932	10-13-1991*	West's Ann.Cal.C.C.P. §§ 676 to 676.16.
Colorado	1990, H.B. 90-1177	1-1-1991	West's C.R.S.A. §§ 13-62.1-101 to 13-62.1-118.
Connecticut	1989, P.A. 89-134	5-24-1989*	C.G.S.A. §§ 50a-50 to 50a-65.
Delaware	1997, c. 148	1-1-1998	10 Del.C. §§ 5201 to 5215.
District of Columbia ...	1995, D.C.Act 11-164	2-10-1996	D.C. Official Code, 2001 Ed. §§ 15-901 to 15-914.
Hawaii	1990, c. 50	1-1-1991	HRS §§ 658B-1 to 658B-14.
Idaho	2001, c. 329	7-1-2001	I.C. §§ 10-1501 to 10-1517.
Illinois	1990, P.A. 86-1291	1-1-1991	S.H.A. 735 ILCS 5/12-630 to 5/12-645.
Minnesota	1991, c. 156	1-1-1992	M.S.A. §§ 548.40 to 548.53.
Montana	1993, c. 152	10-1-1993	MCA §§ 25-9-701 to 25-9-715.
Nevada	1993, c. 113	1-1-1994	N.R.S. 17.410 to 17.660.
New Jersey	1993, c. 317	1-1-1994	N.J.S.A. 2A:49A-1 to 2A:49A-15.
New Mexico	1991, c. 181	7-1-1991	NMSA 1978, §§ 39-4C-1 to 39-4C-16.
North Carolina	1995, c. 213	10-1-1995	G.S. §§ 1C-1820 to 1C-1834.
North Dakota	1991, c. 362	1-1-1992	NDCC 32-41-01 to 32-41-13.
Ohio	1994, H.B. 292	7-20-1994	R.C. §§ 2337.01 to 2337.15.
Oklahoma	1994, c. 165	1-1-1995	12 Okl.St.Ann. §§ 729.1 to 729.16.
Oregon	1991, c. 202	1-1-1992	ORS 24.260 to 24.335.

Jurisdiction	Laws	Effective Date	Statutory Citation
Rhode Island	2009, ch. 248	11-10-2009	Gen.Laws 1956, §§ 9-32.1-1 to 9-32.1-17.
Utah	1990, c. 200	4-23-1990	U.C.A. 1953, 78B-5-401 to 78B-5-416.
Virgin Islands	1992, Act No. 5785	6-2-1992*	11 V.I.C. §§ 1530 to 1545.
Virginia	1991, c. 24	7-1-1991	Code 1950, §§ 8.01-465.14 to 8.01-465.25.
Washington	1991, c. 153	1-1-1992	West's RCWA 6.44.010 to 6.44.904.
Wisconsin	1991, Act 236	1-1-1992	W.S.A. 806.30 to 806.44.

* Date of approval.

§ 15-901. Definitions.

For the purposes of this chapter, the term:

(1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) "Conversion date" means the banking day next preceding the date on which money, in accordance with this chapter, is:

(A) Paid to a claimant in an action or distribution proceeding;

(B) Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

(C) Used to recoup, set off, or counterclaim in different moneys in an action or distribution proceeding.

(4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

(5) "Foreign money" means money other than money of the United States of America.

(6) "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in, or measured by, a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by an intergovernmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to section 15-904.

(9) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, 2 or more persons having a joint or common trust, or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to, or reasonably usable by, a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transactions giving rise to the foreign-money claim.

(11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding 2 days.

(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791; Mar. 13, 2004, D.C. Law 15-105, § 101, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 85(e), 52 DCR 2638.)

§ 15-901

JUDGMENTS AND EXECUTIONS; FEES AND COSTS

Historical and Statutory Notes

Effect of Amendments

D.C. Law 15-105, in the introductory language, substituted “this chapter” for “this act”.

D.C. Law 15-354, in the introductory language, substituted “this chapter” for “this subchapter”.

Legislative History of Laws

Law 15-105, the “Technical Amendments Act of 2003”, was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291

and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Law 15-354, the “Technical Amendments Act of 2004”, was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

§ 15-902. Variation by agreement.

(a) The effect of this chapter may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(b) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791; Mar. 13, 2004, D.C. Law 15-105, § 101, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 85(e), 52 DCR 2638.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 15-105, in subsec. (a), substituted “this chapter” for “this act”.

D.C. Law 15-354, in subsec. (a), substituted “this chapter” for “this subchapter”.

D.C. Law 15-354 validated a previously made technical correction.

Legislative History of Laws

For Law 15-105, see notes following § 15-901.

For Law 15-354, see notes following § 15-901.

§ 15-912. Supplementary general principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity, including the law merchant, and the laws relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement the provisions of this chapter.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791; Mar. 13, 2004, D.C. Law 15-105, § 101, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 85(e), 52 DCR 2638.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 15-105 substituted “this chapter” for “this act” in both places.

D.C. Law 15-354 substituted “this chapter” for “this subchapter”.

Legislative History of Laws

For Law 15-105, see notes following § 15-901.

For Law 15-354, see notes following § 15-901.

§ 15-913. Applicability.

(a) This chapter applies only to a foreign-money claim in an action or distribution proceeding.

(b) This chapter applies to foreign money issues even if other law, under the conflict of laws rules of the District of Columbia, applies to other issues in the action or distribution proceeding.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791; Mar. 13, 2004, D.C. Law 15-105, § 101, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 85(e), 52 DCR 2638.)

Historical and Statutory Notes**Effect of Amendments**

D.C. Law 15-105, in subsecs. (a) and (b), substituted “this chapter” for “this act”.

D.C. Law 15-354, in subsecs. (a) and (b), substituted “this chapter” for “this subchapter”.

Legislative History of Laws

For Law 15-105, see notes following § 15-901.

For Law 15-354, see notes following § 15-901.

§ 15-914. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting similar legislation.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791; Mar. 13, 2004, D.C. Law 15-105, § 101, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 85(e), 52 DCR 2638.)

Historical and Statutory Notes**Effect of Amendments**

D.C. Law 15-105 substituted “this chapter” for “this act” in two places.

D.C. Law 15-354 substituted “this chapter” for “this subchapter”.

Legislative History of Laws

For Law 15-105, see notes following § 15-901.

For Law 15-354, see notes following § 15-901.

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